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80-1-101. Definition. Unless the context requires otherwise, in this title "department" means the department of agriculture provided for in Article XII, section 1, of the Montana constitution and in Title 2, chapter 15, part 30.

History: En. 3-106.1 by Sec. 1, Ch. 218, L. 1974; R.C.M. 1947, 3-106.1.

80-1-102. Duties of department. The department shall:

(1) encourage and promote the interests of agriculture, including horticulture and apiculture, and all other allied industries;

(2) collect and publish statistics relating to the production and marketing of crops and other agricultural products so far as the information may be of value to the agricultural and allied interests of the state;

(3) assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture;

(4) adopt standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products;

(5) cooperate with producers and consumers in devising and maintaining economical and efficient systems of distribution and aid in the reduction of waste and expense incidental to marketing;

(6) have the authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, and act as a clearinghouse for information of value to producers and consumers;

(7) gather and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of the commodities is accomplished efficiently, economically, and without hardship, waste, or fraud;

(9) cooperate with Montana state university-Bozeman, the agricultural experiment station, and the federal government for the betterment of the agricultural industries of the state, the improvement of rural life, and promotion of equality of opportunity for the farmers of the state;

(10) take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) sell and dispose of personal property owned by it in a manner the department may provide, when in the judgment of the department the sale or disposal best promotes the purposes for which the department is established;

(12) contract in respect to any matter within the scope of its authority;

(13) enforce this title and all other laws for the protection and regulation of agriculture.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R.C.M. 1921; re-en. Sec. 3561, R.C.M. 1935; amd. Sec. 13, Ch. 80, L. 1961; amd. Sec. 2, Ch. 218, L. 1974; R.C.M. 1947, 3-107; amd. sec. 36, Ch. 308, L. 1995.

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Registration of farm and ranch names, 30-13-112.

80-1-201. Department of revenue to collect farm statistics. It shall be the duty of the department of revenue, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator, or renter as shall be called for by the director of agriculture and on blanks to be prepared and furnished by the director of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R.C.M. 1921; re-en. Sec. 2043, R.C.M. 1935; amd. Sec. 22, Ch. 405, L. 1973; R.C.M. 1947, 84-449.

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Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

80-1-202. Delivery to director of agriculture. The original blanks upon which the statistics are gathered by the department of revenue shall be returned to the director of agriculture immediately on completion of the assessment work and not later than July 1 each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R.C.M. 1921; re-en. Sec. 2044, R.C.M. 1935; amd. Sec. 23, Ch. 405, L. 1973; R.C.M. 1947, 84-450.

80-1-203. Statistics, how obtained. If for any reason the department of revenue is unable to obtain the statistics from any farm owner, operator, or renter, it shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R.C.M. 1921; re-en. Sec. 2045, R.C.M. 1935; amd. Sec. 24, Ch. 405, L. 1973; R.C.M. 1947, 84-451.

80-1-204. Penalty for refusal to furnish statistics. Any farm owner, operator, or renter refusing to furnish the information called for in 80-1-201, or willfully furnishing fraudulent information to the department of revenue, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $10 or more than $100, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R.C.M. 1921; re-en. Sec. 2046, R.C.M. 1935; amd. Sec. 25, Ch. 405, L. 1973; R.C.M. 1947, 84-452.

Part 3

Voluntary Environmental Audit Act

Part Compiler's Comments

Termination: Section 10, Ch. 534, L. 1997, provided: "[This act] terminates October 1, 2001."

80-1-301. *(Temporary)* **Short title.** This part may be cited as the "Voluntary Environmental Audit Act". *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 1, Ch. 534, L. 1997.

80-1-302. *(Temporary)* **Purpose.** The legislature finds that environmental protection and environmental quality will be enhanced by incentives to voluntarily identify and remedy violations of environmental laws and that the public will be benefited by the voluntary identification and remedy. The legislature further finds that nothing in 80-1-303 through 80-1-306 is intended to inhibit or to be a substitute for the exercise of the regulatory authority by those agencies entrusted with protecting Montana's environment. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 2, Ch. 534, L. 1997.

80-1-303. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the:

(a) department of justice provided for in 2-15-2001;

(b) department of agriculture provided for in 2-15-3001; or

(c) department of environmental quality provided for in 2-15-3501.

(2) "Environmental audit" is a periodic, documented, voluntary internal assessment, evaluation, or review not required by law, rule, or permit that is conducted by a regulated entity or its agent and initiated by the regulated entity for the purpose of determining compliance with environmental law, rule, or permit enforced by the department. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 3, Ch. 534, L. 1997.

80-1-304. *(Temporary)* **Immunity from imposition of civil or administrative penalties for violations found and disclosed.** The state or the department may not pursue civil or administrative penalties under this title against a regulated entity or its agent acting within the scope of the agent's authority for violations discovered during an environmental audit and disclosed within 30 days in writing to the department after the violation is determined to exist if the following conditions are met:

(1) a written compliance schedule is negotiated between the department and the regulated entity to promptly correct violations disclosed unless the violation has been resolved to the satisfaction of the department at the time of the disclosure;

(2) the regulated entity takes steps to prevent recurrence of the violation; and

(3) the regulated entity cooperates with the department and provides information that is necessary for the implementation of this part. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 4, Ch. 534, L. 1997.

80-1-305. *(Temporary)* **Submission and use of environmental audit information.** (1) If a regulated entity discloses a violation to the department that is found during an environmental audit, the disclosure must be submitted on a form provided by the department that includes submittal of the following information:

(a) the date of discovery of the violation;
(b) the name and location of the regulated entity;
(c) identification of the law or rule violated;
(d) a description of the conditions relating to or affecting the violation;
(e) compliance efforts made to correct or eliminate the violation;
(f) recommendations for additional compliance efforts, if necessary, to correct or eliminate the violation; and
(g) recommendations necessary to prevent reoccurrence of the violation.

(2) (a) The form submitted to the department in subsection (1) is public information, but the department may not request the environmental audit. The department may request all relevant facts and data that the department needs to independently establish the nature and extent of the violation and to determine whether all damage created by the violation has been corrected. The environmental audit report and its relevant underlying data is subject to discovery according to the rules of civil or criminal procedure. Any information contained in an environmental audit form pertaining to violations that were discovered as a result of the audit and disclosed and corrected as required by this part may not be used by the department against the regulated entity in any administrative hearing or judicial action.

(b) The prohibition in subsection (2)(a) does not apply to the use of voluntary statements made in connection with the information when offered for impeachment purposes or in a subsequent action for perjury, false statement, or contempt.

(3) Documents, communications, compliance data, reports, or other information required to be collected, developed, maintained, or reported to the department according to state law, rule, or permit are not covered by the provisions of this part. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 5, Ch. 534, L. 1997.

80-1-306. *(Temporary)* **Limitations on applicability.** (1) Sections 80-1-301 through 80-1-305 do not apply to a violation if:

(a) the regulated entity purposely or knowingly committed the violation;
(b) the violation was the result of gross negligence of the regulated entity;
(c) the regulated entity has established a pattern of violating a specific state or federal environmental law, rule, regulation, permit, order, or compliance schedule within the 3 years before the date of the disclosure at the same facility;
(d) the regulated entity has not corrected the violation according to any compliance schedule negotiated pursuant to 80-1-304;
(e) before the date of the environmental audit through which a violation was discovered, an investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation is initiated by the department;
(f) (i) the department has assumed primacy over the administration of a federally delegated environmental law or program and 80-1-301 through 80-1-305 would cause the state program not to meet the delegation requirements for that program; or
(ii) 80-1-301 through 80-1-305 would prevent the state from obtaining primacy; or

(g) the violation disclosed to the department by the regulated entity caused actual substantial damage to human health or the environment.

(2) An environmental audit may not be used to prevent the department from carrying out its statutory or regulatory functions. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 6, Ch. 534, L. 1997.

CHAPTER 2

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Part 1

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80-2-101. Trust assets of rural rehabilitation corporation — department of agriculture designated to make application. The department of agriculture is designated as the department of Montana state government to apply to the secretary of agriculture of the United States or any other proper federal official under Public Law 499, 81st congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 103, Ch. 218, L. 1974; R.C.M. 1947, 3-2801.

80-2-102. Agreements with United States secretary of agriculture authorized. (1) The department shall enter into agreements with the secretary of agriculture of the United States under section 2(f) of Public Law 499, 81st congress, upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended, and do all things necessary to carry out the agreements.

(2) The program must be administered with funds appropriated for such purposes and any request for an increase of spending authority for administering the program requires a budget amendment and is subject to Title 17, chapter 7, part 4.

History: En. Sec. 2, Ch. 112, L. 1951; amd. Sec. 104, Ch. 218, L. 1974; R.C.M. 1947, 3-2802; amd. Sec. 3, Ch. 328, L. 1985.

80-2-103. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture under 80-2-102 must be received by the department and paid by it to the state treasurer for deposit in the expendable trust fund and are statutorily appropriated, as provided in 17-7-502, to be used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963; amd. Sec. 105, Ch. 218, L. 1974; R.C.M. 1947, 3-2803; amd. Sec. 38, Ch. 281, L. 1983; amd. Sec. 33, Ch. 703, L. 1985; amd. Sec. 11, Ch. 628, L. 1989.

80-2-104. Powers of department — claims and obligations — property acquired at foreclosure. (1) The department may:

(a) collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this part or under any mortgage, lease, contract, or agreement entered into or administered under this part and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) bid for and purchase at any execution, foreclosure, or other sale or otherwise acquire property upon which the department has a lien by reason of a judgment or execution or which is pledged, mortgaged, or conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the department under this part;

(c) accept title to any property so purchased or acquired, operate or lease the property for a period necessary to protect the investment, and sell or otherwise dispose of the property in a manner consistent with this part.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture with respect to funds or assets authorized to be administered and used by him under agreements entered into under 80-2-102.

History: En. Sec. 4, Ch. 112, L. 1951; amd. Sec. 106, Ch. 218, L. 1974; R.C.M. 1947, 3-2804.

Cross-References

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Department defined, 80-1-101.

80-2-105. United States and secretary of agriculture free from liability. The United States and the secretary of agriculture are free from liability by virtue of the transfer of the assets to the department under this part.

History: En. Sec. 5, Ch. 112, L. 1951; amd. Sec. 107, Ch. 218, L. 1974; R.C.M. 1947, 3-2805.

80-2-106. Rules. The department may adopt rules necessary to carry out the provisions of this part.

History: En. 3-2806 by Sec. 1, Ch. 30, L. 1977; R.C.M. 1947, 3-2806.

Part 2

Hail Insurance

Part Cross-References

Farm mutual insurers, Title 33, ch. 4.

80-2-201. Powers and duties of board of hail insurance. The board of hail insurance provided for in 2-15-3003:

(1) shall hold meetings when necessary and essential for the proper conduct of its business;

(2) is hereby authorized, directed, and empowered to make rules as it may from time to time find practical, necessary, and beneficial for the administration of this part;

(3) shall prescribe blank forms for all purposes necessary, proper, and incidental to the effective operation and enforcement of this part; and

(4) shall use any appropriate means of communication to inform Montana producers of the purposes, scope, and benefits of this part in furnishing protection against loss by hail at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this part.

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; R.C.M. 1947, 82-1501(part); amd. Sec. 4, Ch. 691, L. 1983.

80-2-202. Compensation of chairman and officers. (1) The appointed members of the board of hail insurance shall receive a per diem of $25 for each day they are engaged in the transaction of official business.

(2) All board members and employees shall be allowed expenses as provided in 2-18-501 through 2-18-503.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law.

History: **En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R.C.M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; re-en. Sec. 363, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969; amd. Sec. 34, Ch. 13, L. 1977; amd. Sec. 13, Ch. 343, L. 1977; R.C.M. 1947, 82-1519.**

80-2-203. Participation in program — tax. (1) A taxpayer or an association of taxpayers engaged in the growing of crops other than those specified in this part or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable levies may be imposed as agreed upon by the board and the taxpayers. The taxpayers are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each farmer taxpayer who signifies a desire to become subject to the provisions of this part shall file with the department of revenue the properly filled out form not later than August 15. The taxpayer is chargeable with the tax provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. the day immediately following the acceptance of the application by the department of revenue.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail tax provided in this part.

History: **(1)En. Sec. 11, Ch. 169, L. 1917; re-en. Sec. 362, R.C.M. 1921; re-en. Sec. 362, R.C.M. 1935; Sec. 82-1518, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; R.C.M. 1947, 82-1501(3), 82-1518; amd. Sec. 33, Ch. 451, L. 1993; amd. Sec. 144, Ch. 27, Sp. L. November 1993.**

Cross-References

Crop lien — when created — assessment, 80-2-226.

80-2-204. Duty of department of revenue — election of benefits of law. The department of revenue shall upon request explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail the provisions of this part. The department of revenue shall issue hail insurance policies to each taxpayer who desires to become subject to this part, to become liable for the tax levies provided in this part, and to be eligible for the benefits and protection of this part. A taxpayer who elects to become subject to this part is liable for the taxes levied for hail insurance and shall participate in the benefits and protection afforded by this part. Either the owners of lands worked by others under lease or contract may make the election for hail insurance or the lessee of the land may tender payment of the tax levied for hail insurance to protect the lessee's crops, in cash, to the officer authorized to receive payment.

History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R.C.M. 1921; re-en. Sec. 356, R.C.M. 1935; amd. Sec. 60, Ch. 391, L. 1973; R.C.M. 1947, 82-1512; amd. Sec. 5, Ch. 691, L. 1983; amd. Sec. 145, Ch. 27, Sp. L. November 1993.

Cross-References

County Assessor as agent of Department of Revenue, 15-8-102.

80-2-205. What crops subject to provisions of law. The crops grown on the lands of all taxpayers who shall elect to become subject to this part shall be insured under the provisions of this part for the acreage and the kind of crop for which taxes for hail insurance will have been levied, which insurance shall be provided for, determined, and adjusted and paid for as provided by this part.

History: En. Sec. 6, Ch. 169, L. 1917; re-en. Sec. 357, R.C.M. 1921; re-en. Sec. 357, R.C.M. 1935; R.C.M. 1947, 82-1513.

80-2-206. Cash payment. When an applicant for hail insurance tenders cash for the insurance to the department of revenue, the applicant is allowed a discount of 4%. The hail insurance must be issued upon the cash payment less the 4%. The charge for the insurance must be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall arrange for the proper refund to the insured. All cash received by the department of revenue must be promptly turned over to the county treasurer, who shall furnish the insured with a current receipt and place the money in the hail insurance fund.

History: En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; R.C.M. 1947, 82-1503(2); amd. Sec. 146, Ch. 27, Sp. L. November 1993.

Cross-References

Collection of levies — release of lien, 80-2-230.

80-2-207. Delinquent taxes — application by delinquent — crop lien. (1) An owner of land who has more than 1 year's delinquent taxes on the land may not be allowed hail insurance under the provisions of this part, unless the owner's application is accompanied by a cash payment for the amount that would be due on the application in the event of a maximum levy for that year.

(2) Any grain grower unable to secure state hail insurance under the provisions of this part because of delinquent taxes or for other reasons may make application to the department of revenue, and the department of revenue may receive and accept the applications when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules and requirements that may be prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules and requirements. Upon receipt of the application, the department of revenue shall make a record of the application and shall file the original in the office of the clerk and recorder of the county. The department of revenue shall also cause an assessment for the proper amount to be made on the property tax record in the same manner provided for in the case of other special levies or assessments.

(3) A tenant who has delinquent hail insurance that was secured by a crop lien only and not secured by real estate may not be allowed another policy in any succeeding year until the delinquent account or accounts are paid or until the tenant pays cash for the current hail insurance.

(4) If a tenant becomes delinquent for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction. If the reasons for requesting a reduction are approved by the board, the board may reduce the charge to not less than one-half the original amount charged.

History: (1) thru (3)En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; Sec. 82-1503, R.C.M. 1947; (4)En. Sec. 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; R.C.M. 1947, 82-1503(1), (3), 82-1509(part); amd. Sec. 147, Ch. 27, Sp. L. November 1993.

Cross-References

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Taxation provisions — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Hail insurance secured by crop lien only, 80-2-227.

Hail insurance — payment of losses, 80-2-244.

80-2-208. Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than $24 insurance on each acre of grain which is on nonirrigated land and not more than $48 per acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided per acre as represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure.

History: En. Sec. 2, Ch. 40, L. 1923; re-en. Sec. 350.1, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1949; amd. Sec. 1, Ch. 200, L. 1953; amd. Sec. 1, Ch. 154, L. 1975; amd. Sec. 31, Ch. 13, L. 1977; R.C.M. 1947, 82-1502.

80-2-209. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to grain crops which occur from year to year and in order to enable the hail insurance board to spread the effect of these variations more evenly over all years, the board is hereby authorized to negotiate for and to secure reinsurance of a part of the risk in any year when the need of such reinsurance appears advisable to the board. The board is hereby authorized to use moneys from hail insurance levies for the purchase of such reinsurance whenever it appears to the board that such reinsurance is necessary and advisable.

History: En. Sec. 3, Ch. 37, L. 1943; amd. Sec. 74, Ch. 147, L. 1963; R.C.M. 1947, 82-1505.

80-2-210 through 80-2-220 reserved.

80-2-221. Tax for hail insurance. (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this part, to the department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(1); amd. Sec. 1, Ch. 20, L. 1979; amd. Sec. 6, Ch. 691, L. 1983.

80-2-222. Board to establish amount of levy — disposition of funds. (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state, which rates must be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year must be plainly printed on the application for hail insurance, and the rates for the year must be determined and levied by the board of hail insurance for each of the various districts as established, in such proportions as will in its judgment be fair and equitable.

(3) The board of hail insurance has authority to accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) In making the levy provided in this section and 80-2-223, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year that are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

(5) If at the end of any hail insurance season the board determines that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its

discretion, refund the excess to the farmers insured for the year, on a pro rata or percentage basis.

(6) The board of hail insurance may direct the board of investments to invest funds from the enterprise fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the board of hail insurance account in the enterprise fund.

History: (1), (2)En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; Sec. 82-1506, R.C.M. 1947; (3) thru (5)En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R.C.M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; re-en. Sec. 352, R.C.M. 1935; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977; Sec. 82-1507, R.C.M. 1947; R.C.M. 1947, 82-1506(4), (5), 82-1507(1), (2), (7); amd. Sec. 39, Ch. 281, L. 1983; amd. Sec. 7, Ch. 691, L. 1983; amd. Sec. 1, Ch. 69, L. 1993.

Cross-References

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

Payment for losses from hailstorms, 80-2-244.

80-2-223. Levy by department of revenue. The department of revenue shall prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this part in accordance with the recommendation of the board of hail insurance.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).

Cross-References

Levies authorized for agricultural commodity protection, Art. XII, sec. 1, Mont. Const.

80-2-224. Assessment — notice — when payable. Notice of such assessment shall be mailed by the county treasurer to each person insured in the same manner and at the same time as notices of property taxes due. The assessment shall be payable at the office of the county treasurer of each respective county.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part); amd. Sec. 8, Ch. 691, L. 1983.

80-2-225. Real estate lien — creation. The tax levies are chargeable to the lands of each taxpayer who elects to become subject to this part and must be entered in the property tax record and collected by the officers charged with such duties in the manner and form as are other property taxes. If the levies are not paid, they are a lien on the lands against which they are levied in the same manner as are other property taxes.

History: **En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part); amd. Sec. 148, Ch. 27, Sp. L. November 1993.**

Cross-References

Liens on real estate, Title 71, ch. 3, part 13.

80-2-226. Crop lien — when created — assessment. (1) In addition to the lien created in 80-2-225 on the land of the insured, the levy for such hail insurance shall constitute a lien on the crops insured with the exception that the crop lien may not apply to owners of unencumbered land or to the land or crops of those who pay cash for hail insurance. The applications of these persons may not be filed with the county clerk and recorded as provided for in 80-2-207. The crop lien shall be included in all applications for hail insurance, with the above exceptions, and shall be enforced as provided in 80-2-230 and 80-2-231 against all insured except those owning unencumbered land or those who have paid cash for hail insurance.

(2) All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land.

History: **En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).**

Cross-References

Lien for hail insurance, 71-3-711.

How lien for hail insurance obtained, 71-3-712.

Participation in hail insurance program — tax, 80-2-203.

80-2-227. Hail insurance secured by crop lien only. When any hail insurance issued under this part is secured by a crop lien only said crop lien is hereby declared a first lien on the insured crop, except only any crop lien which may have been given to secure the purchase price for the seed which was bought and used to plant and produce the insured grain.

History: **En. Sec. 3, Ch. 37, L. 1943; R.C.M. 1947, 82-1504.**

Cross-References

Delinquent taxes — application by delinquent — crop lien, 80-2-207.

80-2-228. Reserve fund. (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that the addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount is the maximum permissible reserve fund for the next year.

(3) The reserve must be deposited in an enterprise fund.

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board for the current year pursuant to 80-2-221.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R.C.M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; re-en. Sec. 352, R.C.M. 1935; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977; R.C.M. 1947, 82-1507(3) thru (6); amd. Sec. 40, Ch. 281, L. 1983; amd. Sec. 9, Ch. 691, L. 1983; amd. Sec. 34, Ch. 703, L. 1985; amd. Sec. 12, Ch. 628, L. 1989; amd. Sec. 2, Ch. 69, L. 1993.

80-2-229. Withdrawal of crop in case of destruction through other means. When any crop insured under this part shall have been destroyed by any other cause than hail, the applicant may, by furnishing the proof required by the board of hail insurance, cause the crop to be withdrawn from the regular levy of the board for the current year. Such proof shall be submitted to the board of hail insurance in accordance with its rules. Said rules shall be plainly printed on the applications and policies issued by the department. They shall provide that the cost for such withdrawn insurance shall be varied as nearly as practical according to the time the insurance is in force and according to the risk carried.

History: En. Sec. 3, Ch. 34, L. 1919; amd. Sec. 3, Ch. 141, L. 1921; re-en. Sec. 353, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1931; re-en. Sec. 353, R.C.M. 1935; R.C.M. 1947, 82-1508.

80-2-230. Collection of levies — release of lien. (1) The county treasurer in each county in the state shall collect all levies made under this part in the same manner as other property taxes are collected and shall keep all moneys collected by him or for him for hail insurance in a separate fund to be known as the hail insurance fund and remit the same to the state treasurer in the same manner as provided by law for the remittance of other moneys due to the state. All county treasurers shall use due diligence in making the collections of the levies provided herein. Also the board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time, depositing any collections therefrom with the treasurer of the county where the levy therefor was made.

(2) All insurance levies, whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full and not in semiannual payments on or before November 30 of each year in which such levies are made.

(3) Whenever the amount due on any hail insurance secured by a crop lien is paid, the treasurer shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid thereon with the date of payment and such endorsement shall be a satisfaction and release of such lien.

History: (1), (3)En. Sec, 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; (2)En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; Sec. 82-1506, R.C.M. 1947; R.C.M. 1947, 82-1506(part), 82-1509(part).

Cross-References
Cash payment — discount, 80-2-206.

80-2-231. Foreclosure of lien. If the person receiving hail insurance secured by a crop lien fails to pay said insurance to the county treasurer by December 1 of the year in which the crop so insured is grown, the county treasurer shall on that day or as soon as possible thereafter deliver to the sheriff of said county a full, true, and correct copy of the lien on file in the office of the clerk and recorder and such sheriff must immediately demand from the person or persons signing such lien payment of the amount due thereon and, if the same is not paid to the sheriff upon such demand being made, the sheriff must forthwith seize and sell in the manner provided by law for the sale of personal property under execution a sufficient amount of grain belonging to such person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale.

History: En. Sec. 7, Ch. 40, L. 1923; re-en. Sec. 354.1, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1949; R.C.M. 1947, 82-1510.

Cross-References
Hail insurance — lien on crop, 71-3-711.

80-2-232. State treasurer's duty — warrants — transfers to county and state general fund. (1) The state treasurer shall receive all money paid under this part and shall place the money in trust for the hail insurance program to the credit of the enterprise fund. All money collected by the board must be deposited in the enterprise fund, and all losses must be paid from that fund. All other costs are administrative expenses and must be paid from the board's enterprise fund. If registered warrants are presented and there is no money to pay the warrants, the warrants must be registered and bear interest at the rate of 4% per annum until called for payment by the state treasurer.

(2) Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's enterprise fund to the county treasurer of each county where state hail insurance coverage is in force 2% of the gross annual levies made and collected in that county under this part for the use of the county as the board of county commissioners may determine.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's enterprise fund to the general fund of the state of Montana 1.5% of the gross annual levies made and collected in the state of Montana.

History: En. Sec. 4, Ch. 169, L. 1917; amd. Sec. 1, Ch. 183, L. 1921; re-en. Sec. 355, R.C.M. 1921; amd. Sec. 8, Ch. 40, L. 1923; re-en. Sec. 355, R.C.M. 1935; amd. Sec. 1, Ch. 189, L. 1961; amd. Sec. 75, Ch. 147, L. 1963; R.C.M. 1947, 82-1511; amd. Sec. 41, Ch. 281, L. 1983; amd. Sec. 10, Ch. 691, L. 1983; amd. Sec. 3, Ch. 69, L. 1993.

80-2-233 through 80-2-240 reserved.

80-2-241. Report of losses. All losses by hail to crops insured under this part shall be reported within 14 days thereafter by the owner of such crops, his agent or attorney, to the board of hail insurance, which shall require the claimant to make a statement of the losses sustained, the cause thereof, and such other information as the board may require on the forms to be provided for such purpose. If a loss is reported more than 14 days after it occurs, the board shall charge the claimant for all costs incurred in making the adjustment.

History: En. Sec. 7, Ch. 169, L. 1917; re-en. Sec. 358, R.C.M. 1921; amd. Sec. 9, Ch. 40, L. 1923; re-en. Sec. 358, R.C.M. 1935; R.C.M. 1947, 82-1514; amd. Sec. 11, Ch. 691, L. 1983.

80-2-242. Appraisers — appointment — qualifications — duties. (1) The department of agriculture shall as soon as practicable each year retain a sufficient number of appraisers to appraise all losses by hail incurred under this part in the various counties. The persons so appointed shall be actively engaged in farming or shall have had practical experience in farming.

(2) The board may call on one or more of the duly appointed appraisers for the adjustment of each and every loss, and the said appraisers shall promptly report their findings to the board according to the rules provided by the board.

(3) No appraiser who shall be a relative, attorney, agent, employee, or creditor or in any manner interested by lien, mortgage, or otherwise in the crop injured or destroyed shall assist in adjusting any such loss.

(4) The board may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921; re-en. Sec. 359, R.C.M. 1921; re-en. Sec. 359, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1973; R.C.M. 1947, 82-1515; amd. Sec. 12, Ch. 691, L. 1983.

80-2-243. Disputed appraisal. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser, then he shall have the right to appeal to the board of hail insurance. He shall make such appeal by registered or certified mail within 10 days after receiving the adjustment offer of the board in writing. Also the board may require the posting of a cash bond of $25 with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the $25 bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant.

(2) In case the adjuster who makes the second appraisal fails to secure an agreement, the claimant may at his option submit the matter to arbitration as herein provided or sue the board in the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. Where any claimant demands arbitration, he shall, if required by the board, furnish a cash bond to the board in the sum of $50 which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the $50 bond, then the board may use a part or all of said cash bond. In cases where the claimant secures an increase, the bond shall be promptly returned to the claimant. If the claimant elects to submit the matter to arbitration, he shall then appoint one disinterested person as appraiser and the official appraiser shall appoint another person as appraiser and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in 80-2-242. The judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss.

(3) (a) If the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the three

appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum, then the same shall be paid by the board.

(b) If the insured shall be required to pay the expenses of such reappraisement as above provided, the board is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

(4) The board shall examine all reports of appraisers and verify the same and adjust all losses and for such purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial appraisement of losses by hail.

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R.C.M. 1921; amd. Sec. 10, Ch. 40, L. 1923; re-en. Sec. 360, R.C.M. 1935; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967; R.C.M. 1947, 82-1516; amd. Sec. 13, Ch. 691, L. 1983.

80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year.

(2) The board shall on or before November 1 order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that in no case may the payment for loss exceed $24 per acre for grain crops on nonirrigated lands, $48 per acre on irrigated lands. No claimant may receive payment for any loss incurred where the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated, share and share alike, among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses shall be paid out of the reserve without interest in such order as the board directs, when in the judgment of the board there are sufficient moneys to provide for the payment of the same and other items payable out of the reserve. In any year the board may by resolution authorize its chairman and secretary to borrow as needed from any person, bank, or corporation such sum or sums of money as the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants shall bear interest at not to exceed 6% a year, and the warrants and the interest thereon shall be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer.

History: En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921; re-en. Sec. 361, R.C.M. 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. Sec. 2, Ch. 8, L. 1929; re-en. Sec. 361, R.C.M. 1935; amd. Sec. 5, Ch. 33, L. 1949; amd. Sec. 4, Ch. 200, L. 1953; amd. Sec. 77, Ch. 147, L. 1963; amd. Sec. 4, Ch. 154, L. 1975; amd. Sec. 33, Ch. 13, L. 1977; R.C.M. 1947, 82-1517; amd. Sec. 14, Ch. 691, L. 1983.

Cross-References

Effect of delinquent taxes, 80-2-207.

Disposition of hail insurance funds, 80-2-222.

80-2-245. Benefits exempt from execution. All money or benefits received from hail insurance are exempt from execution, are not liable to attachment, and may not be seized, taken, or appropriated by any local process to pay any debt or liability of the insured unless the amount is assigned and then for no more than the amount of the claim intended to be secured by the assignment, with lawful interest.

History: En. Sec. 13, Ch. 40, L. 1923; re-en. Sec. 363.1, R.C.M. 1935; R.C.M. 1947, 82-1520; amd. Sec. 2, Ch. 20, L. 1979.

Cross-References

Exempt property — bankruptcy proceeding, 31-2-106.

CHAPTER 3

PRODUCE

Part 1 — Standard Grades and Brands
(Repealed. Sec. 15, Ch. 553, L. 1993)

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80-3-313. Advertisements — grade stated.
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Part 5 — Bean Storage
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Part 6 — Produce Wholesalers
(Repealed. Sec. 15, Ch. 553, L. 1993)

Part 7 — Itinerant Merchants
(Repealed. Sec. 15, Ch. 553, L. 1993)

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Public markets, Title 7, ch. 21, part 33.

City to weigh and inspect grain and hay, 7-21-4203.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — warehouse receipts, bills of lading, and other shipping documents, Title 30, ch. 7.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Weight and measure of berries and small fruits, 30-12-408.

Cooperative agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

Montana Food, Drug, and Cosmetic Act — when food adulterated, Title 50, ch. 31, part 1; 50-31-202.

Sale of agricultural goods by state institutions, Title 53, ch. 1, part 3.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Free fare for caretaker of vegetables and fruit shipped by railroad, 69-11-208.

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

Suitable railroad cars to be furnished for grain or other bulk commodity shipments, 69-14-921.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, part 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Agricultural loans — loan guaranty program — fund, 80-12-215, 80-12-216.

Marketing — export assistance, Title 90, ch. 9, part 4.

Part 1

Standard Grades and Brands (Repealed. Sec. 15, Ch. 553, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

80-3-101. En. Sec. 2, Ch. 165, L. 1933; re-en. Sec. 3633.2, R.C.M. 1935; amd. Sec. 2, Ch. 79, L. 1969; amd. Sec. 74, Ch. 218, L. 1974; R.C.M. 1947, 3-1402.

80-3-102. En. Sec. 9, Ch. 165, L. 1933; re-en. Sec. 3633.9, R.C.M. 1935; amd. Sec. 8, Ch. 79, L. 1969; R.C.M. 1947, 3-1409.

80-3-103. Ap. p. Sec. 1, Ch. 165, L. 1933; re-en. Sec. 3633.1, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1969; Sec. 3-1401, R.C.M. 1947; Ap. p. Sec. 4, Ch. 165, L. 1933; re-en. Sec. 3633.4, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974; Sec. 3-1404, R.C.M. 1947; R.C.M. 1947, 3-1401, 3-1404(6).

80-3-104. En. Sec. 3, Ch. 165, L. 1933; re-en. Sec. 3633.3, R.C.M. 1935; amd. Sec. 3, Ch. 79, L. 1969; amd. Sec. 75, Ch. 218, L. 1974; R.C.M. 1947, 3-1403.

80-3-105. En. Sec. 4, Ch. 165, L. 1933; re-en. Sec. 3633.4, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974; R.C.M. 1947, 3-1404(1) thru (5), (7).

80-3-106. En. Sec. 5, Ch. 165, L. 1933; re-en. Sec. 3633.5, R.C.M. 1935; amd. Sec. 5, Ch. 79, L. 1969; amd. Sec. 16, Ch. 13, L. 1977; R.C.M. 1947, 3-1405.

80-3-107. En. Sec. 1, Ch. 46, L. 1935; re-en. Sec. 3633.11, R.C.M. 1935; R.C.M. 1947, 3-1411.

80-3-108. En. Sec. 6, Ch. 165, L. 1933; re-en. Sec. 3633.6, R.C.M. 1935; amd. Sec. 6, Ch. 79, L. 1969; amd. Sec. 17, Ch. 13, L. 1977; R.C.M. 1947, 3-1406.

80-3-109. En. Sec. 7, Ch. 165, L. 1933; re-en. Sec. 3633.7, R.C.M. 1935; amd. Sec. 7, Ch. 79, L. 1969; amd. Sec. 77, Ch. 218, L. 1974; R.C.M. 1947, 3-1407.

80-3-110. En. Sec. 8, Ch. 165, L. 1933; re-en. Sec. 3633.8, R.C.M. 1935; amd. Sec. 78, Ch. 218, L. 1974; amd. Sec. 3, Ch. 155, L. 1975; R.C.M. 1947, 3-1408; amd. Sec. 187, Ch. 575, L. 1981.

80-3-111. (1)En. Sec. 10, Ch. 165, L. 1933; re-en. Sec. 3633.10, R.C.M. 1935; amd. Sec. 9, Ch. 79, L. 1969; amd. Sec. 79, Ch. 218, L. 1974; Sec. 3-1410, R.C.M. 1947; (2)En. Sec. 2, Ch. 46, L. 1935; re-en. Sec. 3633.12, R.C.M. 1935; Sec. 3-1412, R.C.M. 1947; R.C.M. 1947, 3-1410, 3-1412.

Part 2

Apples — Inspection, Grading, and Packing (Repealed. Sec. 15, Ch. 553, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

80-3-201. En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R.C.M. 1921; re-en. Sec. 3630, R.C.M. 1935; Sec. 3-1305, R.C.M. 1947; amd. and redes. 3-3401 by Sec. 70, Ch. 218, L. 1974; R.C.M. 1947, 3-3401; amd. Sec. 3, Ch. 25, L. 1987.

80-3-202. En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; re-en. Sec. 4265.1, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971; Sec. 90-201, R.C.M. 1947; amd. and redes. 3-3402 by Sec. 172, Ch. 218, L. 1974; amd. Sec. 26, Ch. 13, L. 1977; R.C.M. 1947, 3-3402.

80-3-203. En. Sec. 2, Ch. 138, L. 1931; re-en. Sec. 4265.2, R.C.M. 1935; Sec. 90-202, R.C.M. 1947; redes. 3-3403 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3403.

80-3-204. En. Sec. 3, Ch. 138, L. 1931; amd. Sec. 2, Ch. 39, L. 1935; re-en. Sec. 4265.3, R.C.M. 1935; Sec. 90-203, R.C.M. 1947; amd. and redes. 3-3404 by Sec. 171, Ch. 218, L. 1974; R.C.M. 1947, 3-3404.

80-3-205. En. Sec. 4, Ch. 138, L. 1931; re-en. Sec. 4265.4, R.C.M. 1935; Sec. 90-204, R.C.M. 1947; redes. 3-3405 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3405.

80-3-206. En. Sec. 5, Ch. 138, L. 1931; re-en. Sec. 4265.5, R.C.M. 1935; Sec. 90-205, R.C.M. 1947; redes. 3-3406 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3406.

80-3-207. En. Sec. 6, Ch. 138, L. 1931; amd. Sec. 3, Ch. 39, L. 1935; re-en. Sec. 4265.6, R.C.M. 1935; Sec. 90-206, R.C.M. 1947; redes. 3-3407 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3407.

80-3-208 through 80-3-210 reserved.

80-3-211. En. Sec. 1, Ch. 25, L. 1987.

80-3-212. En. Sec. 2, Ch. 25, L. 1987; amd. Sec. 1, Ch. 39, L. 1989.

Part 3
Montana Produce Act

80-3-301. Short title. This part may be cited as the "Montana Produce Act".

History: En. Sec. 1, Ch. 553, L. 1993.

80-3-302. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Container" means any package, sack, box, crate, carton, basket, or other object used for the shipping of produce.

(2) "Director" means the director of agriculture appointed pursuant to 2-15-3001.

(3) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(4) "Produce" means any fruit, vegetable, or other natural product designated by department rule. The term does not include livestock and its byproducts, poultry and its byproducts, apiary products, dairy products, or grain.

(5) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state, except vegetative seed potato products intended or used for planting purposes.

(6) "Produce unit" means the standard size container for a given type of produce. A produce unit may be established by department rule.

(7) "Retail" means sale of produce to the ultimate consumer.

(8) "Shipping point inspection" means an inspection of produce at the location from which it was shipped.

(9) "Stop sale order" means a written notice to hold produce from sale or movement until a violation has been resolved and the produce is released by the department.

(10) "Wholesale" means the sale of produce intended for resale. The term does not include the sale of Montana-grown produce when sold by the Montana grower for purposes of resale or vegetative seed potato products intended or used for planting purposes.

History: En. Sec. 2, Ch. 553, L. 1993.

80-3-303. Powers and duties of department. (1) The department may:

(a) enter a premises at any reasonable time to inspect produce for condition, for grade, or for determining compliance with the provisions of this part; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations, in furtherance of this part.

(2) The department shall adopt rules necessary for the efficient implementation of this part.

History: En. Sec. 3, Ch. 553, L. 1993.

80-3-304. Disposition of funds — produce account. (1) There is a produce account in the state special revenue fund. All inspection and license fee revenue authorized and collected under this part must be deposited in the account to the credit of the department.

(2) Money received as revenue under this part that is not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the account must be deposited in the account.

History: **En. Sec. 4, Ch. 553, L. 1993.**

80-3-305. Enforcement — stop sale order — injunction. (1) The department may place a stop sale order on any lot of produce sold or transported without proper labeling or in violation of this part.

(2) If a person violates any provision of this part, the department may seek to enjoin that person from further business until the person has complied with this part. The department may file an injunction action in the first judicial district court. The injunction provided for by this section is in addition to the misdemeanor penalty provided for in 80-3-306.

History: **En. Sec. 5, Ch. 553, L. 1993.**

80-3-306. Penalties. (1) A person who violates or aids in the violation of any provision of this part or rules adopted under this part is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense;

(b) a misdemeanor punishable as provided in 46-18-212.

(2) Assessment of a civil penalty under subsection (1)(a) may be made in conjunction with any other warning, order, or administrative action authorized by 80-3-301 through 80-3-306 that is issued by the department. The proceeds of a civil penalty must be deposited in the general fund.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in this part may be construed as requiring the department or its authorized representative to report violations of this part when a reasonable belief exists that the public interest will be served by a suitable warning.

(5) It is the duty of a county attorney to whom any violation is reported to cause appropriate proceedings to be initiated and prosecuted in a court of competent jurisdiction without delay.

History: **En. Sec. 6, Ch. 553, L. 1993.**

80-3-307 through 80-3-310 reserved.

80-3-311. Standard grades for produce. (1) Unless a Montana grade standard has been established, the standard grades for produce:

(a) are limited to the U.S. grades governing the produce;

(b) must conform in all respects and be identical with the most recent standards established by the U.S. department of agriculture for the produce; and

(c) when conforming, must be accepted as the legal standards for this state.

(2) The department may by rule establish state grades for produce grown in Montana when the amount grown reaches a volume rendering it of market

importance or when requested by the industry. State produce grades must be established in consultation with representatives of the various components of the produce industry, including growers, sellers, buyers, traders, wholesalers, retailers, and consumers.

(3) The grade "Montana unclassified" must contain at least 50% of produce that would grade U.S. No. 2 or better.

(4) Produce not conforming to established grades may be sold if it is marked in the same manner as graded produce, except that in place of specifying the grade, the word "ungraded" or "unclassified" must be used.

History: En. Sec. 7, Ch. 553, L. 1993.

80-3-312. Markings — exceptions. (1) A person may not sell, pack, offer for sale or transport, deliver, or consign in interstate or intrastate commerce produce prepared for market unless each container has been legibly marked with the declared grade of the produce and the name and address of the person responsible for the packing and grading. The grade declared must conform to the provisions of this part.

(2) Produce that is grown in Montana or any other produce arriving or found in Montana in containers that have no grade marking must meet the requirements of the U.S. No. 1 grade or be marked with the proper grade.

(3) This section does not apply to:

(a) a person selling to the ultimate consumer produce that was grown by that person and that is not for resale; or

(b) the display of produce on a free choice rack.

(4) Produce may be sold for seed purposes when graded under rules adopted by the department and plainly marked for seed purposes.

History: En. Sec. 8, Ch. 553, L. 1993.

80-3-313. Advertisements — grade stated. Produce for which a grade is established in this part, when advertised with a price stated, must meet the requirements of U.S. No. 1 grade or better or must show, in addition to the price quoted, the true grade of the produce as provided by law. Price tags exhibited in a place of business on exposed produce are not considered advertising under this section.

History: En. Sec. 9, Ch. 553, L. 1993.

80-3-314. Reporting requirements — assessment fees — exceptions. (1) Produce sold or distributed in this state must be reported, on forms approved by the department, and must be assessed a fee per produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents per produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding $15,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.

(3) The report and fees are due on or before the 30th day of the month following each calendar quarter.

(4) Payment of the produce assessment fee is not required on produce that is:

(a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed $15,000;

(b) grown in this state, not packaged for market, and sold for resale by the grower;

(c) in the case of vegetative seed potato products, intended or used for planting purposes; or

(d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been reported and the assessment fee has been paid.

History: En. Sec. 10, Ch. 553, L. 1993.

80-3-315. Shipping point inspection — fees. Produce graded and prepared for shipment is subject to a shipping point inspection by the department upon request; however, Montana-grown seed potatoes that are entered in the Montana seed certification program and prepared for shipment off the farm for planting purposes are subject to a shipping point inspection by the department. Inspection fees must be set by rule and must be commensurate with the cost of providing the inspection.

History: En. Sec. 11, Ch. 553, L. 1993.

80-3-316 through 80-3-320 reserved.

80-3-321. Produce dealer license — exception — renewal. (1) A produce dealer license is required for any person who:

(a) wholesales produce in this state;

(b) transports produce from out of state into this state for retail sale; or

(c) retails produce grown by the produce dealer in this state when gross retail sales exceed $15,000 annually.

(2) A produce dealer license is not required for a person who complies with the requirements of this part and who:

(a) retails produce grown by that person in this state if annual gross produce sales do not exceed $15,000; however, the person shall, upon request by the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales; or

(b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with this part.

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of this part. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of $50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in 80-3-314.

(4) A produce dealer license, if required, must be carried at any time produce is sold and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department.

History: En. Sec. 12, Ch. 553, L. 1993.

80-3-322. Revocation, suspension, and nonrenewal of license. The department may revoke, suspend, or refuse to renew a produce dealer license if the department has reasonable cause to believe that the licensee has committed any of the following acts:

(1) refusal or consistent failure to file a produce report or to pay the assessment fee required in 80-3-314;

(2) intentional or consistent failure to grade or mark produce as required in 80-3-312;

(3) aiding another person in the violation of any of the provisions of this part;

(4) failure or refusal to allow inspection of or to maintain and provide records, reports, or other information required by the department; or

(5) violation, failure, or refusal to comply with any other provision of this part or a rule adopted by the department in the implementation of this part.

History: En. Sec. 13, Ch. 553, L. 1993.

80-3-323. Publication of reports. The department may publish the names and addresses of persons licensed under this part and may also publish a list of licenses revoked, suspended, or not renewed pursuant to 80-3-322 and the reasons for revocation, suspension, or nonrenewal.

History: En. Sec. 14, Ch. 553, L. 1993.

Part 4 reserved

Part 5

Bean Storage
(Repealed. Sec. 75, Ch. 539, L. 1983. See Title 80, ch. 4, parts 4 through 7.)

Part Compiler's Comments

Histories of Repealed Sections:

80-3-501. En. Sec. 2, Ch. 164, L. 1935; re-en. Sec. 3592.55, R.C.M. 1935; amd. Sec. 32, Ch. 218, L. 1974; R.C.M. 1947, 3-702; amd. Sec. 3, Ch. 20, L. 1979.

80-3-502. En. Sec. 3, Ch. 164, L. 1935; re-en. Sec. 3592.56, R.C.M. 1935; R.C.M. 1947, 3-703.

80-3-503. En. Sec. 4, Ch. 164, L. 1935; re-en. Sec. 3592.57, R.C.M. 1935; amd. Sec. 32, Ch. 147, L. 1963; amd. Sec. 33, Ch. 218, L. 1974; R.C.M. 1947, 3-704; amd. Sec. 1, Ch. 300, L. 1979.

80-3-504. En. Sec. 5, Ch. 164, L. 1935; re-en. Sec. 3592.58, R.C.M. 1935; amd. Sec. 34, Ch. 218, L. 1974; R.C.M. 1947, 3-705.

80-3-505. En. Sec. 6, Ch. 164, L. 1935; re-en. Sec. 3592.59, R.C.M. 1935; amd. Sec. 35, Ch. 218, L. 1974; R.C.M. 1947, 3-706.

80-3-506. En. Sec. 7, Ch. 164, L. 1935; re-en. Sec. 3592.60, R.C.M. 1935; R.C.M. 1947, 3-707.

80-3-507. En. Sec. 8, Ch. 164, L. 1935; re-en. Sec. 3592.61, R.C.M. 1935; amd. Sec. 36, Ch. 218, L. 1974; R.C.M. 1947, 3-708.

80-3-508. En. Secs. 9, 13, Ch. 164, L. 1935; re-en. Secs. 3592.62, 3592.66, R.C.M. 1935; amd. Secs. 37, 40, Ch. 218, L. 1974; R.C.M. 1947, 3-709, 3-713; amd. Sec. 4, Ch. 20, L. 1979.

80-3-509. En. Sec. 10, Ch. 164, L. 1935; re-en. Sec. 3592.63, R.C.M. 1935; amd. Sec. 38, Ch. 218, L. 1974; amd. Sec. 8, Ch. 13, L. 1977; R.C.M. 1947, 3-710.

80-3-510. En. Sec. 11, Ch. 164, L. 1935; re-en. Sec. 3592.64, R.C.M. 1935; R.C.M. 1947, 3-711.

80-3-511. En. Sec. 12, Ch. 164, L. 1935; re-en. Sec. 3592.65, R.C.M. 1935; amd. Sec. 39, Ch. 218, L. 1974; amd. Sec. 9, Ch. 13, L. 1977; R.C.M. 1947, 3-712.

80-3-512. En. Sec. 14, Ch. 164, L. 1935; re-en. Sec. 3592.67, R.C.M. 1935; amd. Sec. 41, Ch. 218, L. 1974; R.C.M. 1947, 3-714.

80-3-513. En. Sec. 15, Ch. 164, L. 1935; re-en. Sec. 3592.68, R.C.M. 1935; R.C.M. 1947, 3-715; amd. Sec. 5, Ch. 20, L. 1979.

Part 6
Produce Wholesalers (Repealed. Sec. 15, Ch. 553, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

80-3-601. En. Sec. 3, Ch. 164, L. 1933; re-en. Sec. 2443.3, R.C.M. 1935; Sec. 84-3403, R.C.M. 1947; amd. and redes. 3-3301 by Sec. 160, Ch. 218, L. 1974; R.C.M. 1947, 3-3301; amd. Sec. 1, Ch. 406, L. 1981.

80-3-602. En. Sec. 2, Ch. 164, L. 1933; amd. Sec. 1, Ch. 173, L. 1935; re-en. Sec. 2443.2, R.C.M. 1935; Sec. 84-3402, R.C.M. 1947; amd. and redes. 3-3302 by Sec. 159, Ch. 218, L. 1974; R.C.M. 1947, 3-3302.

80-3-603. En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; re-en. Sec. 2443.4, R.C.M. 1935; Sec. 84-3404, R.C.M. 1947; amd. and redes. 3-3303 by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977; R.C.M. 1947, 3-3303(1) thru (4), (6); amd. Sec. 1, Ch. 257, L. 1987; amd. Sec. 1, Ch. 620, L. 1987.

80-3-604. En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; re-en. Sec. 2443.4, R.C.M. 1935; Sec. 84-3404, R.C.M. 1947; amd. and redes. 3-3303 by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977; R.C.M. 1947, 3-3303(5).

80-3-605. En. Sec. 5, Ch. 164, L. 1933; re-en. Sec. 2443.5, R.C.M. 1935; Sec. 84-3405, R.C.M. 1947; amd. and redes. 3-3304 by Sec. 162, Ch. 218, L. 1974; R.C.M. 1947, 3-3304.

80-3-606. En. Sec. 6, Ch. 164, L. 1933; re-en. Sec. 2443.6, R.C.M. 1935; Sec. 84-3406, R.C.M. 1947; amd. and redes. 3-3305 by Sec. 163, Ch. 218, L. 1974; R.C.M. 1947, 3-3305.

80-3-607. En. Sec. 7, Ch. 164, L. 1933; re-en. Sec. 2443.7, R.C.M. 1935; Sec. 84-3407, R.C.M. 1947; amd. and redes. 3-3306 by Sec. 164, Ch. 218, L. 1974; R.C.M. 1947, 3-3306.

80-3-608. En. Sec. 8, Ch. 164, L. 1933; re-en. Sec. 2443.8, R.C.M. 1935; Sec. 84-3408, R.C.M. 1947; amd. and redes. 3-3307 by Sec. 165, Ch. 218, L. 1974; R.C.M. 1947, 3-3307.

80-3-609. En. Sec. 10, Ch. 164, L. 1933; re-en. Sec. 2443.10, R.C.M. 1935; Sec. 84-3410, R.C.M. 1947; amd. and redes. 3-3308 by Sec. 166, Ch. 218, L. 1974; R.C.M. 1947, 3-3308.

80-3-610. En. Sec. 13, Ch. 164, L. 1933; re-en. Sec. 2443.13, R.C.M. 1935; Sec. 84-3413, R.C.M. 1947; amd. and redes. 3-3309 by Sec. 167, Ch. 218, L. 1974; R.C.M. 1947, 3-3309.

80-3-611. En. Sec. 14, Ch. 164, L. 1933; re-en. Sec. 2443.14, R.C.M. 1935; Sec. 84-3414, R.C.M. 1947; amd. and redes. 3-3310 by Sec. 168, Ch. 218, L. 1974; R.C.M. 1947, 3-3310.

80-3-612. En. Sec. 15, Ch. 164, L. 1933; re-en. Sec. 2443.15, R.C.M. 1935; Sec. 84-3415, R.C.M. 1947; amd. and redes. 3-3311 by Sec. 169, Ch. 218, L. 1974; amd. Sec. 5, Ch. 155, L. 1975; R.C.M. 1947, 3-3311.

80-3-613. En. Sec. 18, Ch. 164, L. 1933; amd. Sec. 3, Ch. 173, L. 1935; re-en. Sec. 2443.16, R.C.M. 1935; Sec. 84-3416, R.C.M. 1947; amd. and redes. 3-3312 by Sec. 170, Ch. 218, L. 1974; amd. Sec. 25, Ch. 13, L. 1977; R.C.M. 1974, 3-3312; amd. Sec. 50, Ch. 557, L. 1987.

Part 7
Itinerant Merchants (Repealed. Sec. 15, Ch. 553, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

80-3-701. (1)Ap. p. Sec. 1, Ch. 214, L. 1939; Sec. 84-3001, R.C.M. 1947; amd. and redes. 3-3201 by Sec. 144, Ch. 218, L. 1974; amd. Sec. 4, Ch. 155, L. 1975; Sec. 3-3201, R.C.M. 1947; Ap. p. Sec. 3, Ch. 214, L. 1939; Sec. 84-3003, R.C.M. 1947; amd. and redes. 3-3203 by Sec. 146, Ch. 218, L. 1974; Sec. 3-3203, R.C.M. 1947; (2)En. Sec. 2, Ch. 214, L. 1939; Sec. 84-3002, R.C.M. 1947; amd. and redes. 3-3202 by Sec. 145, Ch. 218, L. 1974; Sec. 3-3202, R.C.M. 1947; R.C.M. 1947, 3-3201, 3-3202, 3-3203; amd. Sec. 2, Ch. 620, L. 1987; amd. Sec. 1, Ch. 288, L. 1989.

80-3-702. En. Sec. 4, Ch. 214, L. 1939; Sec. 84-3004, R.C.M. 1947; amd. and redes. 3-3204 by Sec. 147, Ch. 218, L. 1974; R.C.M. 1947, 3-3204.

80-3-703. En. Sec. 5, Ch. 214, L. 1939; Sec. 84-3005, R.C.M. 1947; amd. and redes. 3-3205 by Sec. 148, Ch. 218, L. 1974; R.C.M. 1947, 3-3205.

80-3-704. En. Sec. 6, Ch. 214, L. 1939; Sec. 84-3006, R.C.M. 1947; amd. and redes. 3-3206 by Sec. 149, Ch. 218, L. 1974; R.C.M. 1947, 3-3206; amd. Sec. 3, Ch. 620, L. 1987; amd. Sec. 2, Ch. 288, L. 1989.

80-3-705. En. Sec. 7, Ch. 214, L. 1939; Sec. 84-3007, R.C.M. 1947; amd. and redes. 3-3207 by Sec. 150, Ch. 218, L. 1974; R.C.M. 1947, 3-3207; amd. Sec. 2, Ch. 257, L. 1987; amd. Sec. 3, Ch. 288, L. 1989.

80-3-706. En. Sec. 8, Ch. 214, L. 1939; Sec. 84-3008, R.C.M. 1947; amd. and redes. 3-3208 by Sec. 151, Ch. 218, L. 1974; R.C.M. 1947, 3-3208; amd. Sec. 4, Ch. 288, L. 1989.

80-3-707. En. Sec. 9, Ch. 214, L. 1939; Sec. 84-3009, R.C.M. 1947; amd. and redes. 3-3209 by Sec. 152, Ch. 218, L. 1974; R.C.M. 1947, 3-3209.

80-3-708. En. Sec. 10, Ch. 214, L. 1939; Sec. 84-3010, R.C.M. 1947; amd. and redes. 3-3210 by Sec. 153, Ch. 218, L. 1974; R.C.M. 1947, 3-3210.

80-3-709. En. Sec. 11, Ch. 214, L. 1939; Sec. 84-3011, R.C.M. 1947; amd. and redes. 3-3211 by Sec. 154, Ch. 218, L. 1974; R.C.M. 1947, 3-3211.

80-3-710. En. Sec. 12, Ch. 214, L. 1939; Sec. 84-3012, R.C.M. 1947; amd. and redes. 3-3212 by Sec. 155, Ch. 218, L. 1974; R.C.M. 1947, 3-3212.

80-3-711. En. Sec. 13, Ch. 214, L. 1939; Sec. 84-3013, R.C.M. 1947; amd. and redes. 3-3213 by Sec. 156, Ch. 218, L. 1974; R.C.M. 1947, 3-3213.

80-3-712. En. Sec. 14, Ch. 214, L. 1939; Sec. 84-3014, R.C.M. 1947; amd. and redes. 3-3214 by Sec. 157, Ch. 218, L. 1974; R.C.M. 1947, 3-3214.

80-3-713. En. Sec. 15, Ch. 214, L. 1939; Sec. 84-3015, R.C.M. 1947; amd. and redes. 3-3215 by Sec. 158, Ch. 218, L. 1974; R.C.M. 1947, 3-3215.

CHAPTER 4

GRAIN
STANDARDS, STORAGE, AND MERCHANDISING

Part 1 — Grain Standards
(Repealed. Sec. 75, Ch. 539, L. 1983.
See Title 80, ch. 4, parts 4 through 7.)

Part 2 — Grain Merchandising and Storage
(Repealed. Sec. 75, Ch. 539, L. 1983.
See Title 80, ch. 4, parts 4 through 7.)

Part 3 — Commercial Mustard—Standards and Merchandising
(Repealed)

80-4-301 through 80-4-308. Repealed.
80-4-309 and 80-4-310 reserved.
80-4-311. Repealed.
80-4-312. Repealed.
80-4-313. Repealed.

Part 4 — Agricultural Commodities Generally

80-4-401. Short title.
80-4-402. Definitions.
80-4-403. Rules — adoption.
80-4-404. Terms of licenses — renewals.
80-4-405. Maximum bond amount.
80-4-406. Appointment by nonresident licensee of agent to receive process.
80-4-407. Reports to the department.
80-4-408. Examination of books.
80-4-409. Confidentiality of records.
80-4-410. Publication of reports.
80-4-411. Employment of assistants.
80-4-412 through 80-4-414 reserved.
80-4-415. Creation of commodity dealer/public warehouse operators account — deposit of funds.
80-4-416. Deposit of deficiency funds and liquidation funds.

80-4-417 through 80-4-419 reserved.
80-4-420. Producer's lien.
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80-4-426. Duty to prosecute.
80-4-427. Injunction.
80-4-428. Penalty for operating without a license — misrepresentation.
80-4-429. Penalty.
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80-4-503. Fees of department.
80-4-504. Bond of applicant for license — additional bond — additional obligations.
80-4-505. Amount of bond — cancellation.
80-4-506. Net asset requirements.
80-4-507 through 80-4-520 reserved.
80-4-521. Duties of warehouse operator — content of records.
80-4-522. Schedule of charges — posting.
80-4-523. Required receipt of agricultural commodities according to capacity.
80-4-524. Discrimination in charge by warehouse operator prohibited.
80-4-525. Scale weight tickets — form — issuance.
80-4-526. Warehouse receipts — written terms.
80-4-527. Warehouse receipt — issuance — cancellation.
80-4-528. Penalty for unlawful issue of warehouse receipts.
80-4-529. Partial withdrawal of agricultural commodities — adjustment or substitution of receipt — duties of warehouse operator.
80-4-530. Shipment of stored grain to a terminal grain warehouse outside the state.
80-4-531. Duty to deliver stored agricultural commodities — weights and inspections — modifying agreements — damages.
80-4-532. Delivery of grain from different warehouse.
80-4-533. Loss of receipts — conditions of reissue.
80-4-534. Cancellation of insurance — suspension of license.
80-4-535. Repealed.
80-4-536. Termination of storage contract — sale of agricultural commodities for charges — notice required.
80-4-537. Examination of stored agricultural commodities.
80-4-538. Warehouse shortage — remedies.
80-4-539. Inspection by the department.

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80-4-601. Commodity dealer license requirements — financial responsibility.
80-4-602. License fees.
80-4-603. License issuance — renewal — expiration.
80-4-604. Bonding requirement amounts — cancellation.
80-4-605. Posting of license.
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80-4-607. Insufficient checks — prohibition.
80-4-608. Payment of purchase price — definitions.
80-4-609 through 80-4-611 reserved.
80-4-612. Commodity dealer defaults — remedies.
80-4-613. Records.
80-4-614. Claims on bond by injured person.

Part 7 — Grain Inspection and Grading

80-4-701. Official agricultural commodity inspectors, samplers, and weighers — designation of seasonal inspection points — assignment of inspectors.
80-4-702. Qualifications of official agricultural commodity inspectors, samplers, and weighers.
80-4-703. Penalty for misconduct.
80-4-704. Establishment of standard agricultural commodity grades.
80-4-705. Rules governing dockage — sample inspection.
80-4-706. Special inspection of agricultural commodities.
80-4-707. Repealed.
80-4-708. Examination of agricultural commodity cars or trucks at destination.
80-4-709. Protein testing laboratory.
80-4-710. Repealed.
80-4-711. Agricultural commodity sampling — appeal procedure.
80-4-712 through 80-4-720 reserved.
80-4-721. Fees for inspection, testing, and weighing agricultural commodities — disposition — investment.
80-4-722. Records of inspection.
80-4-723. Repealed.
80-4-724. Coloration of agricultural commodities treated with injurious or toxic substances — exception.
80-4-725. Sale or offering for sale of treated product prohibited.
80-4-726. Copies of grades and rules to be furnished and displayed by warehouse operators.
80-4-727. Repealed.

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Montana Wheat and Barley Committee, 2-15-3002.

Public markets, Title 7, ch. 21, part 33.

City to weigh and inspect grain and hay, 7-21-4203.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Producer-held grain in storage — exempt from taxation, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — warehouse receipts, bills of lading, and other shipping documents, Title 30, ch. 7.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Weight and measure of berries and small fruits, 30-12-408.

Cooperative agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

Montana Food, Drug, and Cosmetic Act — when food adulterated, Title 50, ch. 31, part 1; 50-31-202.

Sale of agricultural goods by state institutions, Title 53, ch. 1, part 3.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Free fare for caretaker of vegetables and fruit shipped by railroad, 69-11-208.

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

Suitable railroad cars to be furnished for grain or other bulk commodity shipments, 69-14-921.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Marketing — export assistance, Title 90, ch. 9, part 4.

Part 1
Grain Standards
(Repealed. Sec. 75, Ch. 539, L. 1983. See Title 80, ch. 4, parts 4 through 7.)

Part Compiler's Comments

Histories of Repealed Sections:

80-4-101. En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R.C.M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; re-en. Sec. 3574, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977; R.C.M. 1947, 3-201(1) thru (3).

80-4-102. (1)En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R.C.M. 1921; amd. Sec. 2, Ch. 154, L. 1929; re-en. Sec. 3576, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977; Sec. 3-205, R.C.M. 1947; (2)En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 14, Ch. 218, L. 1974; Sec. 3-211, R.C.M. 1947; R.C.M. 1947, 3-205(part), 3-211.

80-4-103. En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R.C.M. 1921; amd. Sec. 2, Ch. 154, L. 1929; re-en. Sec. 3576, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977; R.C.M. 1947, 3-205(part).

80-4-104. En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R.C.M. 1921; re-en. Sec. 3592, R.C.M. 1935; amd. Sec. 27, Ch. 218, L. 1974; R.C.M. 1947, 3-232(4).

80-4-105. En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R.C.M. 1921; re-en. Sec. 3578, R.C.M. 1935; amd. Sec. 10, Ch. 218, L. 1974; R.C.M. 1947, 3-207.

80-4-106. (1)En. Sec. 23, Ch. 216, L. 1921; re-en. Sec. 3577, R.C.M. 1921; re-en. Sec. 3577, R.C.M. 1935; Sec. 3-206, R.C.M. 1947; (2)En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R.C.M. 1921; re-en. Sec. 3583, R.C.M. 1935; amd. Sec. 17, Ch. 218, L. 1974; Sec. 3-215, R.C.M. 1947; R.C.M. 1947, 3-206, 3-215; amd. Sec. 6, Ch. 20, L. 1979.

80-4-107 through 80-4-110 reserved.

80-4-111. En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 12, Ch. 218, L. 1974; amd. Sec. 1, Ch. 43, L. 1977; R.C.M. 1947, 3-209.

80-4-112. En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 13, Ch. 218, L. 1974; amd. Sec. 3, Ch. 13, L. 1977; R.C.M. 1947, 3-210.

80-4-113. En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R.C.M. 1921; re-en. Sec. 3590, R.C.M. 1935; amd. Sec. 25, Ch. 218, L. 1974; R.C.M. 1947, 3-230.

80-4-114. En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R.C.M. 1921; re-en. Sec. 3591, R.C.M. 1935; amd. Sec. 26, Ch. 218, L. 1974; R.C.M. 1947, 3-231.

80-4-115. En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R.C.M. 1921; re-en. Sec. 3592, R.C.M. 1935; amd. Sec. 27, Ch. 218, L. 1974; R.C.M. 1947, 3-232(1) thru (3).

80-4-116. En. 3-232.1 by Sec. 28, Ch. 218, L. 1974; R.C.M. 1947, 3-232.1.

80-4-117. En. Sec. 1, Ch. 160, L. 1935; re-en. Sec. 3592.42, R.C.M. 1935; amd. Sec. 1, Ch. 379, L. 1973; Sec. 3-512, R.C.M. 1947; amd. and redes. 3-232.2 by Sec. 30, Ch. 218, L. 1974; R.C.M. 1947, 3-232.2.

80-4-118. En. Sec. 2, Ch. 160, L. 1935; re-en. Sec. 3592.43, R.C.M. 1935; Sec. 3-513, R.C.M. 1947; amd. and redes. 3-232.3 by Sec. 31, Ch. 218, L. 1974; R.C.M. 1947, 3-232.3.

80-4-119. (1), (2)En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R.C.M. 1921; amd. Sec. 4, Ch. 154, L. 1929; re-en. Sec. 3581, R.C.M. 1935; amd. Sec. 16, Ch. 218, L. 1974; Sec. 3-213, R.C.M. 1947; (3) thru (5)En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963; amd. Sec. 1, Ch. 70, L. 1973; amd. Sec. 29, Ch. 218, L. 1974; amd. Sec. 4, Ch. 16, L. 1977; Sec. 3-233, R.C.M. 1947; R.C.M. 1947, 3-213, 3-233.

80-4-120. En. Sec. 28, Ch. 216, L. 1921; re-en. Sec. 3582, R.C.M. 1921; re-en. Sec. 3582, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1957; R.C.M. 1947, 3-214.

80-4-121. En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R.C.M. 1921; re-en. Sec. 3584, R.C.M. 1935; amd. Sec. 18, Ch. 218, L. 1974; R.C.M. 1947, 3-216.

80-4-122. En. Sec. 1, Ch. 9, L. 1957; Sec. 94-35-270, R.C.M. 1947; redes. 3-234 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-234.

80-4-123. En. Sec. 2, Ch. 9, L. 1957; Sec. 94-35-271, R.C.M. 1947; redes. 3-235 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-235.

80-4-124. En. Sec. 1, Ch. 80, L. 1959; Sec. 94-35-271.1, R.C.M. 1947; redes. 3-236 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-236.

80-4-125. En. Sec. 2, Ch. 80, L. 1959; Sec. 94-35-271.2, R.C.M. 1947; redes. 3-237 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-237.

80-4-126. En. Sec. 3, Ch. 80, L. 1959; Sec. 94-35-271.3, R.C.M. 1947; redes. 3-238 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-238.

Part 2

Grain Merchandising and Storage (Repealed. Sec. 75, Ch. 539, L. 1983. See Title 80, ch. 4, parts 4 through 7.)

Part Compiler's Comments

Histories of Repealed Sections:

80-4-201. (1), (4), (8)En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R.C.M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; re-en. Sec. 3574, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977; Sec. 3-201, R.C.M. 1947; (2), (3), (5) thru (7)En. Sec. 1, Ch. 39, L. 1973; amd. Sec. 3, Ch. 43, L. 1977; Sec. 3-228.1, R.C.M. 1947; R.C.M. 1947, 3-201(4) thru (6), 3-228.1(part).

80-4-202. En. Sec. 2, Ch. 39, L. 1973; amd. Sec. 4, Ch. 43, L. 1977; R.C.M. 1947, 3-228.2.

80-4-203. En. Sec. 3, Ch. 39, L. 1973; amd. Sec. 41, Ch. 359, L. 1977; R.C.M. 1947, 3-228.3.

80-4-204. En. Sec. 4, Ch. 39, L. 1973; R.C.M. 1947, 3-228.4.

80-4-205. En. Sec. 5, Ch. 39, L. 1973; R.C.M. 1947, 3-228.5.

80-4-206. En. Sec. 6, Ch. 39, L. 1973; R.C.M. 1947, 3-228.6.

80-4-207. En. Sec. 7, Ch. 39, L. 1973; R.C.M. 1947, 3-228.7.

80-4-208. En. 3-228.8 by Sec. 1, Ch. 86, L. 1974; R.C.M. 1947, 3-228.8.

80-4-209. En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R.C.M. 1921; amd. Sec. 5, Ch. 41, L. 1923; re-en. Sec. 3589, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1961; amd. Sec. 23, Ch. 218, L. 1974; amd. Sec. 7, Ch. 13, L. 1977; amd. Sec. 2, Ch. 43, L. 1977; R.C.M. 1947, 3-227.

80-4-210 through 80-4-220 reserved.

80-4-221. En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 15, Ch. 218, L. 1974; R.C.M. 1947, 3-212.

80-4-222. En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R.C.M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; re-en. Sec. 3579, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1957; amd. Sec. 1, Ch. 196, L. 1974; amd. Sec. 11, Ch. 218, L. 1974; amd. Sec. 1, Ch. 302, L. 1975; amd. Sec. 1, Ch. 177, L. 1977; R.C.M. 1947, 3-208.

80-4-223. En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R.C.M. 1921; re-en. Sec. 3585, R.C.M. 1935; amd. Sec. 19, Ch. 218, L. 1974; R.C.M. 1947, 3-217.

80-4-224. En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R.C.M. 1921; re-en. Sec. 3586, R.C.M. 1935; amd. Sec. 20, Ch. 218, L. 1974; R.C.M. 1947, 3-218.

80-4-225. En. Sec. 28, Ch. 209, L. 1919; re-en. Sec. 3587, R.C.M. 1921; re-en. Sec. 3587, R.C.M. 1935; R.C.M. 1947, 3-219.

80-4-226. En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd.

Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 4, Ch. 13, L. 1977; R.C.M. 1947, 3-220.

80-4-227. En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 21, Ch. 218, L. 1974; R.C.M. 1947, 3-221.

80-4-228. En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 22, Ch. 218, L. 1974; R.C.M. 1947, 3-222.

80-4-229. En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; R.C.M. 1947, 3-223.

80-4-230. En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 5, Ch. 13, L. 1977; R.C.M. 1947, 3-224.

80-4-231. En. Sec. 3588-A, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.1, R.C.M. 1935; amd. Sec. 6, Ch. 13, L. 1977; R.C.M. 1947, 3-225(part).

80-4-232. En. Sec. 3588-A, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.1, R.C.M. 1935; amd. Sec. 6, Ch. 13, L. 1977; R.C.M. 1947, 3-225(part).

80-4-233. En. Sec. 3588-B, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.2, R.C.M. 1935; amd. Sec. 11-101, Ch. 264, L. 1963; R.C.M. 1947, 3-226.

80-4-234. En. Sec. 3589-A, R.C.M. 1921, by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925; re-en. Sec. 3589.1, R.C.M. 1935; amd. Sec. 24, Ch. 218, L. 1974; R.C.M. 1947, 3-229.

Part 3
Commercial Mustard — Standards and Merchandising (Repealed)

80-4-301 through 80-4-308. Repealed. Sec. 22, Ch. 76, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

80-4-301. En. Sec. 1, Ch. 35, L. 1941; amd. Sec. 1, Ch. 170, L. 1957; amd. Sec. 20, Ch. 13, L. 1977; R.C.M. 1947, 3-1901.

80-4-302. En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977; R.C.M. 1947, 3-1902(1) thru (4), (6) thru (9).

80-4-303. En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977; R.C.M. 1947, 3-1902(5), (10).

80-4-304. En. Sec. 3, Ch. 35, L. 1941; amd. Sec. 2, Ch. 170, L. 1957; amd. Sec. 22, Ch. 13, L. 1977; R.C.M. 1947, 3-1903.

80-4-305. En. Sec. 4, Ch. 35, L. 1941; R.C.M. 1947, 3-1904.

80-4-306. En. Sec. 5, Ch. 35, L. 1941; R.C.M. 1947, 3-1905.

80-4-307. En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963; amd. Sec. 100, Ch. 218, L. 1974; R.C.M. 1947, 3-1906; amd. Sec. 1, Ch. 277, L. 1983.

80-4-308. En. Sec. 7, Ch. 35, L. 1941; amd. Sec. 7, Ch. 315, L. 1977; R.C.M. 1947, 3-1907.

80-4-309 and 80-4-310 reserved.

80-4-311. Repealed. Sec. 75, Ch. 539, L. 1983. (See Title 80, ch. 4, parts 4 through 7.)

History: En. Sec. 1, Ch. 64, L. 1939; amd. Sec. 101, Ch. 218, L. 1974; amd. Sec. 8, Ch. 315, L. 1977; R.C.M. 1947, 3-1908.

80-4-312. Repealed. Sec. 75, Ch. 539, L. 1983. (See Title 80, ch. 4, parts 4 through 7.)

History: En. Sec. 2, Ch. 64, L. 1939; amd. Sec. 102, Ch. 218, L. 1974; R.C.M. 1947, 3-1909.

80-4-313. Repealed. Sec. 75, Ch. 539, L. 1983. (See Title 80, ch. 4, parts 4 through 7.)

History: En. Sec. 5, Ch. 64, L. 1939; R.C.M. 1947, 3-1912.

Part 4

Agricultural Commodities Generally

80-4-401. Short title. Parts 4 through 7 of this chapter may be cited as the "Agricultural Warehouse, Commodity Dealer, and Grain Standards Act".

History: En. Sec. 1, Ch. 539, L. 1983.

80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.

(2) "Agricultural commodity" means any grain, oil seed crops, seed, or other crops designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means a person who engages in a business involving or, as part of the business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys agricultural commodities from a licensed commodity dealer;

(c) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

(d) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

(e) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

(f) a person who buys agricultural commodities used exclusively for the feeding of livestock and not for resale.

(5) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(6) "Department" means the department of agriculture provided for in 2-15-3001.

(7) "Depositor" means a person who delivers an agricultural commodity to a commodity dealer for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is the owner or

legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

(8) "Director" means the director of the department of agriculture.

(9) "FGIS" means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).

(10) "Grain" means all grains for which standards have been established under the Grain Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated by rule of the department.

(11) "Grain standards" means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.

(12) "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

(13) "Inspector" means a person designated by the director to assist in the administration of parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

(14) "Official agricultural commodity inspectors" means official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of agricultural commodities.

(15) "Official agricultural commodity samplers" or "samplers" means official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

(16) "Official agricultural commodity weighers" means official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results of the services, including the weight of the agricultural commodity.

(17) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(18) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(19) "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities that commingle commodities belonging to different lots of agricultural commodities.

(20) "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

(21) "Purchase price" means the final price after premiums and discounts are assessed.

(22) "Receipt" means a warehouse receipt.

(23) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(24) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(25) "Subterminal warehouse" means a warehouse where an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(26) "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(27) "Warehouse operator" means a person operating or controlling a public warehouse.

(28) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets.

History: En. Sec. 2, Ch. 539, L. 1983; amd. Sec. 1, Ch. 55, L. 1985; amd. Sec. 1, Ch. 578, L. 1985; amd. Sec. 1, Ch. 299, L. 1991; amd. Sec. 1, Ch. 452, L. 1993; amd. Sec. 1, Ch. 337, L. 1995; amd. Sec. 2, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in definition of agricultural commodity, after "grain", substituted "oil seed crops, seed, or other crops" for "beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities"; in definition of delayed payment contract, in first sentence, substituted "purchase price" for "sale price"; in definition of depositor, after "person who", inserted "delivers an agricultural commodity to a commodity dealer for sale"; inserted definition of FGIS; in definition of grain, after "Act", deleted "7 U.S.C. 71 through 87"; inserted definition of grain standards; substituted official agricultural commodity inspections for grain inspections as defined term and at end substituted "agricultural commodities" for "grain"; substituted official agricultural commodity samplers for official grain samplers as defined term; deleted definition of official grain standards that read: ""Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act"; substituted official agricultural commodity weighers for official grain weighers as defined term and at end substituted "agricultural commodity" for "grain"; inserted definition of purchase price; and made minor changes in style. Amendment effective July 1, 1997.

80-4-403. Rules — adoption. The department shall adopt such rules as it determines necessary for the efficient execution of the provisions of parts 4 through 7 of this chapter.

History: En. Sec. 3, Ch. 539, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-4-404. Terms of licenses — renewals. Each license issued or renewed under parts 5 and 6 of this chapter shall be issued for a period to be prescribed by rule of the department.

History: En. Sec. 4, Ch. 539, L. 1983.

80-4-405. Maximum bond amount. The maximum amount of any public warehouse operator bond may not exceed $1 million and the maximum amount of a commodity dealer bond may not exceed $1 million, except:

(1) any bonds compensating for net asset deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. In the event that the public warehouse operator is also licensed as a commodity dealer, only one net asset deficiency amount is required.

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual average index of prices received by Montana farmers for food and feed grains as computed by the Montana crop and livestock reporting service.

History: **En. Sec. 5, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 3, Ch. 76, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 76 inserted last sentence in (1) requiring one asset deficiency amount when the public warehouse operator is a licensed commodity dealer; and made minor changes in style. Amendment effective July 1, 1997.

80-4-406. Appointment by nonresident licensee of agent to receive process. A nonresident applying for a license under this chapter shall file a written power of attorney, designating the secretary of state as his agent upon whom service of process may be had if legal action is brought against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department must be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

History: **En. Sec. 6, Ch. 539, L. 1983.**

Cross-References

Service of process on Secretary of State, Rule 4D(6), M.R.Civ.P. (see Title 25, ch. 20).

80-4-407. Reports to the department. Each person licensed under parts 5 and 6 of this chapter shall report to the department at intervals set by rule of the department on forms prepared by it. The reports must show the total weight of each kind of agricultural commodity received and shipped, the amount of outstanding warehouse receipts on that date, and a statement of the amount of agricultural commodities on hand to cover the outstanding warehouse receipts. The department may also, by rule, require special reports at any time.

History: **En. Sec. 7, Ch. 539, L. 1983.**

80-4-408. Examination of books. The department is authorized, through its officials, employees, or designated agents, to examine or copy all books, records, papers, and accounts of persons licensed under parts 5 and 6 of this chapter.

History: **En. Sec. 8, Ch. 539, L. 1983.**

80-4-409. Confidentiality of records. All financial statements of warehouse operators and commodity dealers required under the provisions of parts 5 and 6 of this chapter must be kept confidential by the department and are not subject to disclosure except:

(1) upon written permission of the licensee;

(2) in actions or administrative proceedings commenced under the provisions of parts 4 through 7 of this chapter;

(3) when required by subpoena or court order;

(4) when disclosed to law enforcement agencies in connection with the investigation or prosecution of criminal offenses; or

(5) when released to a bonding company approved by the department.

History: En. Sec. 9, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 4, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in (2) extended reference to include part 7; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

80-4-410. Publication of reports. The department may publish the results of any investigation made. It may publish the names and addresses of persons licensed under parts 5 and 6 of this chapter, and it may also publish a list of all licenses terminated under parts 5 and 6 of this chapter and the causes therefor.

History: En. Sec. 10, Ch. 539, L. 1983.

80-4-411. Employment of assistants. The department is authorized to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the provisions of parts 4 through 7 of this chapter.

History: En. Sec. 11, Ch. 539, L. 1983.

80-4-412 through 80-4-414 reserved.

80-4-415. Creation of commodity dealer/public warehouse operators account — deposit of funds. (1) There is an account in the state special revenue fund. All revenue received under this chapter must be deposited in the account.

(2) Money received as revenue under this chapter that is not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All earned interest must be deposited in the account.

History: En. Sec. 16, Ch. 452, L. 1993.

80-4-416. Deposit of deficiency funds and liquidation funds. Revenue based on actual expenses received from the liquidation of commodity dealers and public warehouse operators, as authorized in 80-4-538 and 80-4-612, and from deficiency fees, authorized in 80-4-503, must be deposited in the account established in 80-4-415 and is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this chapter. Funds deposited under this chapter must be used to pay actual expenses incurred in the liquidation of commodity dealers and public warehouse operators or for the correction of storage deficiencies. Actual expenses include but are not limited to legal fees, court costs, travel expenses, per diem, and communication.

History: En. Sec. 17, Ch. 452, L. 1993.

80-4-417 through 80-4-419 reserved.

80-4-420. Producer's lien. (1) Agricultural commodities contained on the premises of a public warehouse operator or commodity dealer, including agricultural commodities owned by the warehouse operator or commodity dealer, are subject to a first priority lien in favor of holders of outstanding warehouse receipts, purchase contracts, scale weight tickets, or any other evidence of storage or sale.

(2) The lien must be preferred to a lien or security interest in favor of a creditor of the warehouse operator or commodity dealer regardless of the time

when the creditor's lien or security interest attached to the agricultural commodities. Notice of the lien need not be filed in order to perfect the lien.

(3) The lien is discharged as to agricultural commodities sold by the warehouse operator or commodity dealer to a buyer in the ordinary course of business. The sale does not discharge the lien in favor of an individual holder of outstanding warehouse receipts, purchase contracts, scale weight tickets, or other evidence of storage or sale, on the remaining agricultural commodities on the premises.

History: En. Sec. 18, Ch. 452, L. 1993.

Cross-References

Liens, Title 71, ch. 3.

80-4-421. License suspension and revocation — renewal. (1) The department may revoke, suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, and net asset requirements. In determining compliance with net asset requirements, the department may consider the licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;

(c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter; or

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7.

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631.

History: En. Sec. 12, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 5, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 throughout section, in three places, extended references to parts 4 and 7; in (1)(c) inserted "after considering Title 37, chapter 1, part 2"; inserted (1)(k) regarding failure to satisfy a judgment entered as a result of a violation of the chapter; in (1)(l), after "department", inserted "pursuant to parts 4 through 7"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-4-422. Delayed payment or purchase contracts. (1) A commodity dealer who purchases agricultural commodities by purchase contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a purchase contract must contain or provide for all of the following:

(a) the seller's and purchaser's name and address;

(b) the conditions of delivery;

(c) the amount and kind of agricultural commodities delivered;

(d) the price per unit or basis of value;

(e) the date payment is to be made; and

(f) a notice of financial risk involved in the delayed payment contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403.

(3) Title to all agricultural commodities sold by purchase contract is in the purchaser as of the time the agricultural commodities are delivered to and in physical control of the purchaser unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy must be retained by the commodity dealer, and one copy must be provided to the seller. Upon revocation, suspension, or termination of a commodity dealer's or warehouse operator's license, the department may advance the payment date for all delayed payment contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities must be determined as of the effective date of revocation, suspension, or termination in accordance with all other provisions of the contract. However, if the business

of the commodity dealer is sold to another licensed commodity dealer, purchase contracts may be assigned to the purchasing commodity dealer.

(4) Any contract that does not satisfy the conditions imposed by this part is considered a sale other than a purchase contract and is subject to the provisions of 80-4-608.

History: En. Sec. 13, Ch. 539, L. 1983; amd. Sec. 1, Ch. 518, L. 1991; amd. Sec. 2, Ch. 452, L. 1993.

80-4-423. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 14, Ch. 539, L. 1983.

80-4-424. Director's authority — investigative hearing. The director may upon his own motion, whenever he has reason to believe a violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if he finds probable cause, shall notify the person that he must appear for an investigative hearing before the director 20 days from receipt of written notice.

History: En. Sec. 15, Ch. 539, L. 1983.

80-4-425. Action on bond by persons injured — liability of surety — statute of limitations. (1) All claims against a bond must be made by and through the department. A person injured by the breach of an obligation for which a bond is given to the department may file a complaint with the department. The department shall then investigate the complaint and determine whether it is valid and whether there are any other outstanding obligations due. If the department finds that there are one or more valid obligations, the department shall make demand upon the warehouse operator or commodity dealer and the commodity dealer's surety for payment. If the payment is not made promptly, the department shall commence an action on the bond to enforce payment. If the department determines that a complaint is without merit, the department shall notify the complainant of that determination in writing. The complainant may then bring a contested case under Title 2, chapter 4, part 6, to the department for a determination of whether the department should pursue the claim against the bond.

(2) If two or more persons are injured by breach of the obligation for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond must be prorated by the surety among all of those injured.

(3) The liability of a surety under a bond extends to all obligations from commodity dealers' or public warehouse operators' transactions entered into during the year in which the bond was in effect, up to the maximum amount of the bond. Claims must be brought against the bond within 2 succeeding license years.

History: En. Sec. 16, Ch. 539, L. 1983; amd. Sec. 3, Ch. 452, L. 1993.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

80-4-426. Duty to prosecute. A county attorney who has appropriate jurisdiction and to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court of competent jurisdiction.

History: En. Sec. 17, Ch. 539, L. 1983.

80-4-427. Injunction. If a person without a license is found to have engaged in any business for which a license is required under parts 5 and 6 of this chapter, the court shall enjoin that person from further business until the person has been licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The department may, in its discretion, file the action in the first judicial district court. The injunction provided by this section is an additional remedy to the criminal penalty provided for in 80-4-428.

History: En. Sec. 18, Ch. 539, L. 1983; amd. Sec. 141, Ch. 370, L. 1987; amd. Sec. 4, Ch. 452, L. 1993.

80-4-428. Penalty for operating without a license — misrepresentation. (1) A person acting as a warehouse operator or a commodity dealer without a license or in any way representing by action or words that he is a warehouse operator or a commodity dealer when not so licensed violates the provisions of parts 5 and 6 of this chapter, is guilty of a felony, and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony.

History: En. Sec. 19, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-429. Penalty. (1) Except as otherwise provided, a person who violates any provision of parts 4 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(4)(f) who fails to pay in full all amounts due to a producer for the sale of agricultural commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by this chapter.

(5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an agricultural commodity that contains:

(a) a nitrogen fertilizer added to harvested grain;

(b) a poisonous, deleterious, or other substance not registered or approved by federal or state statutes, regulations, or rules; or

(c) a registered or approved substance that has not been used or applied according to label directions or other government standards.

History: En. Sec. 20, Ch. 539, L. 1983; amd. Sec. 2, Ch. 299, L. 1991; amd. Sec. 5, Ch. 452, L. 1993; amd. Sec. 2, Ch. 337, L. 1995; amd. Sec. 6, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in (1), in three places, extended references to part 7 and at end, after "misdemeanor", deleted "and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than $1,000, or both"; in (4) near middle, substituted "producer" for "commodity dealer"; inserted (5) providing that a person knowingly delivering an agricultural commodity containing a nitrogen fertilizer added to harvest grain, a substance not registered or approved by federal or state law, or a registered or approved substance not used or applied according to label directions is guilty of a felony; and made minor changes in style. Amendment effective July 1, 1997.

80-4-430. Director's enforcement action. Nothing in parts 4 through 7 of this chapter may be construed to require the director or his authorized representative to report for prosecution or for the institution of civil action a violation if he believes that the public interest will best be served by a suitable warning.

History: En. Sec. 21, Ch. 539, L. 1983.

Part 5
Agricultural Commodity Warehouse Operators

Part Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

80-4-501. License necessary to operate public warehouse. (1) A person may not act as a warehouse operator without first having obtained an annual license from the department. This requirement and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do not apply to operators of warehouses that are federally licensed under the United States Warehouse Act. However, if a federally licensed warehouse operator engages in business as a commodity dealer, the provisions of parts 4 through 7 apply to the commodity dealer activity.

(2) If a warehouse operator operates two or more warehouses in the same city or immediately adjacent to the city or in the same immediate area, in conjunction with each other and with the same workforce, if one set of books and records is kept for all the warehouses, cash slips, scale weight tickets, and warehouse receipts, and if checks of one series are used for agricultural commodities stored in the warehouse, only one warehouse operator's license is required for the operation of all the warehouses.

History: En. Sec. 22, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 7, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in second sentence in (1), after "requirement", inserted "and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator" and inserted third sentence providing that provisions of parts 4 through 7 apply to a federally licensed warehouse operator in business as a commodity; and made minor changes in style. Amendment effective July 1, 1997.

80-4-502. Licenses to warehouse operator — issuance — renewal — conditions precedent. (1) The department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouse operator. The insurance shall insure the commodities for the full market value at the time of loss of such commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored therein.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) The applicant has submitted to the department a current financial statement prepared by a licensed accountant according to generally accepted accounting principles, showing that the applicant has and does maintain current assets equal to or greater than current liabilities. Applicants not having adequate current assets equal to or greater than current liabilities may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in 80-4-505.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of $50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503.

History: En. Sec. 23, Ch. 539, L. 1983; amd. Sec. 1, Ch. 157, L. 1989; amd. Sec. 20, Ch. 452, L. 1993.

80-4-503. Fees of department. (1) The department shall collect an annual warehouse operator license fee of $232 for each warehouse owned or operated by the warehouse operator.

(2) If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is

inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.

(3) The department shall collect a fee of $150 a day or fraction of a day for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(4) All license fees collected under subsection (1) and deficiency fees collected under subsection (3) must be deposited into the commodity dealer/public warehouse operators account.

History: En. Sec. 24, Ch. 539, L. 1983; amd. Sec. 4, Ch. 620, L. 1987; amd. Sec. 6, Ch. 452, L. 1993.

80-4-504. Bond of applicant for license — additional bond — additional obligations. (1) Each applicant for a warehouse operator's license shall file a bond or its equivalent, as established by department rule, with the department. The bond must be in such form and must contain such terms and conditions as the department may prescribe by rule to carry out the purpose of this section and 80-4-505.

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouse operator warrants an increase.

(3) The warehouse operator may give a single bond to cover all warehouses operated by him.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under 80-4-505 must be reported in writing to the director, and an appropriate bond must be filed prior to the operation thereof.

History: En. Sec. 25, Ch. 539, L. 1983; amd. Sec. 2, Ch. 578, L. 1985; amd. Sec. 20, Ch. 452, L. 1993.

80-4-505. Amount of bond — cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than $20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouse operator is also operating as a commodity dealer, the warehouse operator shall also provide a bond as prescribed in 80-4-604.

(3) If there occurs a deficiency in net assets as required under 80-4-506, there shall be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouse operator bond shall run continuously with the license until canceled by the bonding company.

(5) A 60-day written notice must be given to the department by the bonding company before any bond is canceled; however, the cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.

History: En. Sec. 26, Ch. 539, L. 1983; amd. Sec. 3, Ch. 578, L. 1985; amd. Sec. 7, Ch. 452, L. 1993.

80-4-506. Net asset requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that his warehouse or warehouses can accommodate.

(2) No person may be licensed as a warehouse operator unless he has and maintains allowable net assets of at least $10,000.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight which all such warehouses will accommodate must be considered in determining whether the warehouse operator meets the net asset requirements specified in this section.

History: En. Sec. 27, Ch. 539, L. 1983; amd. Sec. 4, Ch. 578, L. 1985; amd. Sec. 20, Ch. 452, L. 1993.

80-4-507 through 80-4-520 reserved.

80-4-521. Duties of warehouse operator — content of records. (1) Each warehouse operator shall maintain in a safe place current and complete records at all times with respect to all agricultural commodities stored, conditioned, handled, or shipped by him, including agricultural commodities owned by him. Such records must include but are not limited to a daily position record, showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day and the warehouse operator's total storage obligations for each kind and class of agricultural commodity at the close of each business day.

(2) Every warehouse operator purchasing any agricultural commodity from a depositor thereof shall promptly make and keep for 5 years a correct record showing in detail the following information:

(a) the name and address of the depositor;
(b) the date purchased;
(c) the terms of the sale; and
(d) the quality and quantity purchased by the warehouse operator and, where applicable, the dockage, tare, grade, size, and net weight.

History: En. Sec. 28, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-522. Schedule of charges — posting. (1) Before a license to conduct a warehouse is granted, the warehouse operator shall file with the director a copy of the schedule of charges for storage and other services. The schedule must be posted in a conspicuous place in his warehouse.

(2) All charges made by any warehouse operator for the handling and storage of agricultural commodities must be just and reasonable. However, the

director may, upon the complaint of any person or upon his own motion, hold a public hearing and may declare any existing charges for handling or storage of any agricultural commodity to be unreasonable or unjust. After the hearing, the director shall determine and order what is a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust.

(3) Failure to file and post scheduled charges for the current year will keep in full force the most recently posted and filed schedule rates.

(4) In all cases, the producers will receive the first 15 days of storage without charge.

History: En. Sec. 29, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-523. Required receipt of agricultural commodities according to capacity. A warehouse operator shall receive for storage, conditioning, handling, or shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all agricultural commodities tendered him in the usual course of business in suitable condition for storage. However, a warehouse operator may not be compelled to accept and hold agricultural commodities for storage in such quantities as to block his regular cash agricultural commodity business. A warehouse operator may not be required to accept agricultural commodities for storage in excess of working capacity. However, his appointment of space may be modified by rule upon proof that such appointment operates to the disadvantage of either the public or the warehouse operator.

History: En. Sec. 30, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-4-524. Discrimination in charge by warehouse operator prohibited. A warehouse operator may not directly or indirectly, by a special charge, rebate, drawback, or other device, collect from any person a greater or lesser compensation for any service rendered in the storage, conditioning, handling, or shipment of agricultural commodities than he collects from any other person for a similar circumstance or condition. A warehouse operator may not make or give any advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage.

History: En. Sec. 31, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-525. Scale weight tickets — form — issuance. (1) Scale weight tickets must be bound in books of convenient size and must be numbered consecutively. The original scale weight ticket must be delivered to the person from whom the agricultural commodities are received. One carbon copy of each scale weight ticket must remain as a permanent record.

(2) A scale weight ticket must be issued for each load of agricultural commodity received by the warehouse operator.

(3) A scale weight ticket may not be issued or held in lieu of a warehouse receipt. However, an agricultural commodity under scale weight ticket is considered warehoused liability, and title remains with the depositor until:

(a) the agricultural commodity is sold under a purchase contract;

(b) the agricultural commodity is paid for under 80-4-608; or

(c) a warehouse receipt is issued.

(4) There must be plainly printed across the face of the scale weight ticket issued by the warehouse operator, in bold type, the words “THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE”.

(5) All scale weight tickets must be signed by the warehouse operator or the warehouse operator’s agent.

(6) All scale weight tickets must be converted into cash or warehouse receipts on demand.

History: En. Sec. 32, Ch. 539, L. 1983; amd. Sec. 3, Ch. 299, L. 1991; amd. Sec. 8, Ch. 452, L. 1993.

80-4-526. Warehouse receipts — written terms. (1) Warehouse receipts under this part must contain in written terms:

(a) a statement that the warehouse is operated under a license issued by the department;

(b) a statement showing whether it is an original, duplicate, triplicate, or other copy;

(c) a statement showing the name of the warehouse;

(d) a statement showing the name of the city or town where the warehouse is located;

(e) the date the warehouse receipt is issued;

(f) the number of the warehouse receipt. All receipts must be numbered consecutively.

(g) a statement that the grain is “received in store” from the person named;

(h) a statement of gross weight, dockage, and net weight and the sample report used for grade and protein analysis;

(i) a statement of encumbrances, such as cash or other advances;

(j) a statement that, upon the return of the receipt properly endorsed by the person to whom the order was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance with this part;

(k) a statement that the grain is properly insured for the benefit of the owner; and

(l) the name of the manager or agent of the warehouse.

(2) The face of the warehouse receipt may also provide for other statements, such as:

(a) the scale weight ticket numbers or the assembly sheet number;

(b) the grade; and

(c) the protein certificate used.

(3) The back of the warehouse receipt may include printed statements, such as:

(a) delivery provisions;

(b) actual-delivery-of-grain provisions;

(c) bailment provisions;

(d) act-of-God provisions;

(e) nonnegotiable provisions; and

(f) endorsements and other statements pertinent to bookkeeping data whenever such statements do not conflict with any state or federal law pertaining to public warehousing or the grading or testing of grain.

(4) A copy of the warehouse receipt issued by the warehouse operator must accompany each application for a warehouse operator's license.

History: En. Sec. 33, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

Cross-References

Warehouse receipts — special provisions, Title 30, ch. 7, part 2.

80-4-527. Warehouse receipt — issuance — cancellation. (1) A warehouse receipt is a receipt issued by a licensed warehouse operator on a form containing all the information required by 80-4-526.

(2) A warehouse receipt may not be issued except for an agricultural commodity actually delivered to a warehouse for storage.

(3) All warehouse operators are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.

(4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:

(a) is not legal and is of no value;

(b) has no claim on the agricultural commodity stored in a warehouse; and

(c) has no claim on the warehouse operator's bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouse operator issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. __" (showing the number of the new combination receipt).

(7) A warehouse operator who is a grower may receive the warehouse operator's own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. However, the warehouse operator shall report to the department all warehouse receipts issued to the warehouse operator as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given upon request to the person storing the agricultural commodity covered by the receipt. The other copies must have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the warehouse operator has advanced on the agricultural commodity represented by the receipt, but the notation may not be construed as fixing the date of sale of the grain.

(10) All warehouse receipts must be numbered consecutively as issued by each warehouse operator.

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties.

(12) Warehouse receipts must be canceled by drawing a diagonal line and writing "CANCELED" across the face of the original copy of the warehouse receipt. The cancellation date and method of settlement, such as check number or purchase contract number, must also be noted on the face of the original copy of the warehouse receipt. The warehouse receipt holder or the receipt holder's agent shall sign and date the reverse side of the original copy of the warehouse receipt at the time of settlement. If the agricultural commodity is redelivered to the receipt holder, that fact must be noted.

History: En. Sec. 34, Ch. 539, L. 1983; amd. Sec. 4, Ch. 299, L. 1991; amd. Sec. 9, Ch. 452, L. 1993.

80-4-528. Penalty for unlawful issue of warehouse receipts. A person violating any of the provisions of 80-4-527 or a designated employee knowingly permitting any agricultural commodity to be delivered contrary to the provisions of 80-4-527 is guilty of a misdemeanor and punishable as provided in 80-4-429.

History: En. Sec. 35, Ch. 539, L. 1983.

80-4-529. Partial withdrawal of agricultural commodities — adjustment or substitution of receipt — duties of warehouse operator. When partial withdrawal of his agricultural commodity is made by a depositor, the warehouse operator shall make an appropriate notation thereof on the depositor's warehouse receipt or claim or shall cancel and replace it with a warehouse receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. The warehouse operator is liable for the redelivery of all agricultural commodities specified on all outstanding warehouse receipts.

History: En. Sec. 36, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-530. Shipment of stored grain to a terminal grain warehouse outside the state. (1) Warehouse receipts or signed agreements from the owners of grain, on a form approved by the department and in an amount equal to the number of bushels the warehouse operator has in a terminal grain warehouse outside the state, are required for all grain shipped out of state by a warehouse operator.

(2) Warehouse receipts covering grain in terminal grain warehouses outside the state must have the words "Owner waives redelivery at point of origin of grain represented by this receipt" printed or stamped on the back.

(3) Waivers or agreements to accept terminal warehouse receipts must be signed in triplicate by the owner of the grain or his agent and by a duly authorized representative of the warehouse, with:

(a) the original to be mailed to the department;

(b) the duplicate copy to be retained by the warehouse operator; and

(c) the triplicate copy to be given to the holder of the warehouse receipt.

(4) All grain must be held in bonded and approved terminal warehouses, fully insured for the benefit of the holder of Montana warehouse receipts.

(5) No grain held in terminal warehouses is subject to any lien, mortgage, or encumbrance.

History: En. Sec. 37, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-531. Duty to deliver stored agricultural commodities — weights and inspections — modifying agreements — damages. (1) The duty of the warehouse operator to deliver agricultural commodities stored is governed by this part. Upon the return of a properly endorsed warehouse receipt to the warehouse operator and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein must be delivered to the holder of the warehouse receipt.

(2) The holder of the warehouse receipt is entitled to an official inspection, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act. Inspections other than official must be agreed to in writing by the warehouse operator and the holder of the warehouse receipt.

(3) (a) The holder of a warehouse receipt is entitled to class X or Y weights or better, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act.

(b) In the event an approved class X or Y weight is unavailable at the warehouse of origin, the following weights take precedence in this order:

(i) destination official or certified class X or Y or better; or

(ii) railroad track scale weights.

(4) The parties to a storage agreement are bound by an agreement made under this section and intended to supplement or modify the optional sections of the warehouse receipt if the agreement offer is made in writing and the receiving party fails to reject the offer in writing within 10 days of receipt of the written offer. In order to be valid, the agreement offer must state in boldface type that the receiving party has 10 days to reject the offer.

(5) A warehouse operator's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor as rapidly as it can be done by ordinary diligence. When delivery is made within 48 hours from date of demand or as agreed upon in writing by all parties concerned, the delivery complies with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

(6) All redeliveries must be made at the warehouse or station where the agricultural commodity was received unless otherwise agreed.

(7) At the option of the depositor, the warehouse operator shall deliver the agricultural commodity at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity on that date, less any freight and storage charges to the terminal and less other charges which may be allowed by the department.

(8) In addition to other penalties provided, a warehouse operator failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or liquidated damages of 1/2 of 1% of the value for each day's delay.

History: En. Sec. 38, Ch. 539, L. 1983; amd. Sec. 1, Ch. 297, L. 1989; amd. Sec. 20, Ch. 452, L. 1993.

80-4-532. Delivery of grain from different warehouse. (1) Any warehouse operator owning or operating more than one warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity.

(2) Nothing in subsection (1) confers upon the warehouse operator a right to make delivery of grain of substantially lower value than that delivered for storage, though of the same technical grade, in settlement of warehouse receipts.

(3) The warehouse operator shall at all times keep on hand in bonded warehouses grain of sufficient quality and quantity to settle all outstanding warehouse receipts.

(4) Freight and other charges must be determined at the point of receipt.

History: En. Sec. 39, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-533. Loss of receipts — conditions of reissue. While an original warehouse receipt is outstanding and uncanceled by the issuing warehouse operator, no other or further receipt may be issued for the agricultural commodity or any part of it covered thereby. However, if a warehouse receipt is lost or destroyed, a new receipt may be issued upon giving satisfactory security in compliance with rules adopted by the department. The new receipt must contain the same terms and conditions and must bear on its face the number and date of the receipt in lieu of which it is issued.

History: En. Sec. 40, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-534. Cancellation of insurance — suspension of license. Upon cancellation of any policy of insurance required by 80-4-502 and 80-4-506, the insurance company involved shall give 30 days' advance notice to the department by certified mail, return receipt requested, of cancellation of the policy. If the policy is canceled, the department shall immediately suspend the license of such uninsured warehouse operator without a hearing, pursuant to the Montana Administrative Procedure Act. The suspension may not be removed until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of 80-4-502 and 80-4-506 has been submitted to the department or until further order by the department or a court of competent jurisdiction.

History: En. Sec. 41, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-535. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 42, Ch. 539, L. 1983.

80-4-536. Termination of storage contract — sale of agricultural commodities for charges — notice required. (1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouse operator may, upon the expiration of the storage contract, sell so much of the stored agricultural commodities at the local market price at the close of business on that day as is

sufficient to pay the accrued storage charges. The warehouse operator shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to the provisions of subsection (3). The warehouse operator shall notify all warehouse receipt holders who are subject to the provisions of subsection (3) of the provisions of this section 30 days prior to the end of the license year.

(3) All storage contracts on agricultural commodities evidenced by a warehouse receipt must be terminated within 3 license years. The termination date for those storage contracts must be calculated by considering the license year during which the contract was issued as the first license year, plus 2 additional license years, for a total of 3 license years.

History: En. Sec. 43, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 8, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in (2) inserted third sentence authorizing a warehouse operator to apply for an encumbrance if a warehouse receipt is not returned, in fourth sentence inserted "who are subject to the provisions of subsection (3)", and at end of last sentence substituted "license year" for "storage period"; inserted (3) regarding termination of storage contracts on agricultural commodities evidenced by a warehouse receipt within 3 license years; and made minor changes in style. Amendment effective July 1, 1997.

80-4-537. Examination of stored agricultural commodities. A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse, provided the warehouse or the agricultural commodities stored therein are not endangered by such inspections. Every warehouse operator or his agent shall furnish safe and reasonable access to facilities for such examination.

History: En. Sec. 44, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-538. Warehouse shortage — remedies. (1) For purposes of this section, whenever a warehouse operator stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under the warehouse operator's receipt.

(2) Whenever it appears, after an investigation, that a warehouse operator does not have in the warehouse operator's possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by the warehouse operator or when a warehouse operator refuses to submit the warehouse operator's books, papers, or property to lawful inspection, the department may give notice to the warehouse operator to comply with the following requirements:

(a) to cover the shortage;
(b) to give an additional bond as requested by the department; or
(c) to submit to an inspection as the department considers necessary.

(3) If the warehouse operator fails to comply with the terms of the notice within 24 hours from the date of issuance of the notice or within a further time as the department may allow, the department may petition the district court of the first judicial district, Lewis and Clark County, or the district court in the

county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouse operator and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouse operator from interfering with the department in the discharge of its duties as required by this part.

(4) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouse operator and may notify the holders of record, as shown by the warehouse operator's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the receipts or evidence of deposits. The department may cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouse operator's records. The department shall notify the warehouse operator and the surety on the bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouse operator.

(5) The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the warehouse operator until:

(a) the warehouse operator or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all claims pro rata, if the shortage exceeds the amount of the bond; or

(c) the department is ordered by the court to surrender possession.

(6) If during or after the audit provided for in this section or at any other time the department has evidence that the warehouse operator is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the first judicial district court for the appointment of the department to operate or liquidate the business of the warehouse.

(7) At any time within 10 days after the department takes possession of any agricultural commodities or the books, papers, or property of any warehouse, the warehouse operator may serve notice on the department to appear in the first judicial district court at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers, and other property should not be restored to the warehouse operator's possession.

(8) All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered at the discretion of the department from the assets of the licensee, from the agricultural commodities held by the licensee under warehouse receipt, or in a separate civil action brought by the department in the first judicial district court.

(9) As a part of the expenses incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this part.

(10) The department shall set by rule the time limits for:

(a) notification of its action on the surety bond of a warehouse operator;

(b) the holders of warehouse receipts or scale weight tickets to provide to the department evidence of deposit; and

(c) satisfaction of the claims of all holders of warehouse receipts or other evidence of deposits.

History: En. Sec. 45, Ch. 539, L. 1983; amd. Sec. 5, Ch. 299, L. 1991; amd. Sec. 10, Ch. 452, L. 1993.

80-4-539. Inspection by the department. (1) The department may investigate any warehouse operator who has applied for or who had previously been issued a license and may inspect his warehouse for purposes of determining compliance with this part and rules of the department.

(2) The department may investigate any warehouse operator or inspect any warehouse that it has reasonable cause to believe is operating in violation of this part and rules of the department.

History: En. Sec. 46, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

Part 6

Agricultural Commodity Dealers

80-4-601. Commodity dealer license requirements — financial responsibility. (1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) A license application must include the following:

(a) the name of the applicant;

(b) the names of the officers and directors if the applicant is a corporation;

(c) the names of the partners if the applicant is a partnership;

(d) the location of the principal places of business;

(e) a sufficient and valid bond as specified in 80-4-604;

(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of this part;

(g) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and net worth. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Applicants not having adequate current assets equal to or greater than current liabilities may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in 80-4-604.

(h) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

(4) In order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain net assets of at least $50,000 or maintain a bond in the amount of $2,000 for each $1,000 or fraction thereof of net assets deficiency. However, a minimum of $10,000 net assets is required by a commodity dealer to qualify for a license. Assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal. In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state. A bond submitted for purposes of this subsection is in addition to any bond otherwise required under this part.

(5) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

History: En. Sec. 47, Ch. 539, L. 1983; amd. Sec. 5, Ch. 578, L. 1985; amd. Sec. 2, Ch. 157, L. 1989.

80-4-602. License fees. (1) Except as provided in subsection (3), the department shall collect an annual fee of $232 per facility for each commodity dealer license.

(2) If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.

(3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-202(4) is $100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for agricultural seed intended for resale as agricultural seed.

(4) All fees collected under this section must be placed in the commodity dealer/public warehouse operators account.

History: En. Sec. 48, Ch. 539, L. 1983; amd. Sec. 5, Ch. 620, L. 1987; amd. Sec. 11, Ch. 452, L. 1993; amd. Sec. 9, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in (1), after "$232", inserted "per facility". Amendment effective July 1, 1997.

80-4-603. License issuance — renewal — expiration. (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of this part and the rules of the department.

(2) A commodity dealer's license may be renewed annually by submitting all required licensing documents.

(3) A commodity dealer's license that has expired may be reinstated by the department upon receipt of all licensing documents required and a penalty fee in the amount of $50 if the document is filed within 30 days from the date of expiration of the commodity dealer's license. At no time during the 30-day period or thereafter may the person act as a commodity dealer. All license applications received after the 30-day penalty period must be considered original applications.

(4) A commodity dealer's license is not transferable.

(5) Any partnership with a partner or any corporation that has an officer, director, or majority stockholder owning at least 10% of issued stock who has had a license revoked under this part or the United States Warehouse Act is subject to the provisions of 80-4-421.

History: En. Sec. 49, Ch. 539, L. 1983.

80-4-604. Bonding requirement amounts — cancellation. (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state.

(2) The bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. The minimum amount of bond required by any commodity dealer is $20,000, and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.

History: En. Sec. 50, Ch. 539, L. 1983; amd. Sec. 6, Ch. 578, L. 1985; amd. Sec. 6, Ch. 299, L. 1991; amd. Sec. 12, Ch. 452, L. 1993.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

80-4-605. Posting of license. The commodity dealer's license must be posted in a conspicuous location at his place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck operated by him in the state.

History: En. Sec. 51, Ch. 539, L. 1983.

80-4-606. Inspection of premises, books, and records. The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of his business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state. If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.

History: En. Sec. 52, Ch. 539, L. 1983.

80-4-607. Insufficient checks — prohibition. No person engaged in business as a commodity dealer may draw or deliver any check, draft, or order for payment of money upon any bank for the purchase of agricultural commodities when at the time of drawing or delivery the maker or drawer does not have sufficient funds or has failed to arrange for credit with the bank or depository for payment in full upon presentation of the check, draft, or order for payment of money. The word "credit" as used in this section means an arrangement or understanding with the bank or depository for payment of the check, draft, or order.

History: En. Sec. 53, Ch. 539, L. 1983.

80-4-608. Payment of purchase price — definitions. (1) A person required to be licensed as a commodity dealer shall pay 90% of the purchase price to the owner or the owner's agent for agricultural commodities upon delivery and demand by the owner or agent and the remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in writing by the parties. Title to agricultural commodities sold to a commodity dealer under this section transfers to the commodity dealer upon physical delivery of the commodity.

(2) As used in this section, the following definitions apply:

(a) "Delivery" means the transfer by the seller of title to and possession of agricultural commodities to the commodity dealer or to another person in accordance with the agreement between the seller and the commodity dealer.

(b) "Payment" means the actual payment or tender of payment of the agreed purchase price by the commodity dealer to the seller.

History: En. Sec. 54, Ch. 539, L. 1983; amd. Sec. 13, Ch. 452, L. 1993.

80-4-609 through 80-4-611 reserved.

80-4-612. Commodity dealer defaults — remedies. (1) If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all commodity dealer creditors covered by the bond, the department may petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

(3) All necessary expenses incurred by the department in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part.

History: En. Sec. 7, Ch. 299, L. 1991; amd. Sec. 14, Ch. 452, L. 1993.

80-4-613. Records. (1) A commodity dealer shall provide evidence of delivery, such as scale tickets, for all agricultural commodities purchased from a producer.

(2) A commodity dealer shall keep daily position records or their equivalent showing purchases, deliveries, or payments to producers.

History: En. Sec. 8, Ch. 299, L. 1991.

80-4-614. Claims on bond by injured person. A person injured by the breach of an obligation for which the bond is given may file a claim with the department. Claims will be accepted only from producers and for agricultural commodities grown in Montana.

History: En. Sec. 9, Ch. 299, L. 1991.

Part 7

Grain Inspection and Grading

80-4-701. Official agricultural commodity inspectors, samplers, and weighers — designation of seasonal inspection points — assignment of inspectors. (1) The department shall provide inspectors, samplers, and weighers to enforce this part. At all inspection points designated by the department, the department shall provide sufficient official agricultural commodity inspectors, samplers, and weighers to inspect and weigh all agricultural commodities subject to state inspection.

(2) The department may, during the grain-marketing season, appoint inspectors to visit the grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules of the department.

(3) Expenditures for the inspection and weighing at the points designated by the department may not exceed total fee receipts at those points.

History: En. Sec. 55, Ch. 539, L. 1983; amd. Sec. 10, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in two places substituted reference to agricultural commodity for "grain". Amendment effective July 1, 1997.

80-4-702. Qualifications of official agricultural commodity inspectors, samplers, and weighers. Official agricultural commodity inspectors, samplers, and weighers must be qualified in accordance with the Grain Standards Act. Official agricultural commodity inspectors, samplers, and weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling of agricultural commodities, grain, or grain commodities.

History: **En. Sec. 56, Ch. 539, L. 1983; amd. Sec. 11, Ch. 76, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 76 in two places, after "Official", substituted "agricultural commodity"for "grain"; near end, after "selling of", inserted "agricultural commodities"; and made minor changes in style. Amendment effective July 1, 1997.

80-4-703. Penalty for misconduct. (1) An official agricultural commodity inspector, sampler, or weigher who is guilty of neglect of duty, who knowingly or carelessly inspects, samples, or weighs agricultural commodities improperly, or who directly or indirectly accepts any money or other consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is punishable as provided in 45-7-401.

(2) A person who improperly influences or attempts to improperly influence an official agricultural commodity inspector, sampler, or weigher in the performance of the inspector's, sampler's, or weigher's duties is guilty of bribery and is punishable as provided in 45-7-101.

(3) Upon conviction of an offense described in subsection (1), an official agricultural commodity inspector, sampler, or weigher must be removed by the department pursuant to procedures established by department rule.

History: **En. Sec. 57, Ch. 539, L. 1983; amd. Sec. 12, Ch. 76, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 76 in two places in (1) and in (2) substituted references to agricultural commodity for "grain"; in (3) substituted "official agricultural commodity inspector, sampler, or weigher" for "officer"; and made minor changes in style. Amendment effective July 1, 1997.

80-4-704. Establishment of standard agricultural commodity grades. (1) The department may by rule establish standard grades to apply to all agricultural commodities for which a United States department of agriculture grade has not been established and that are bought by commodity dealers and stored or handled by warehouses in this state. The department shall adopt as state grade and dockage standards all grades for agricultural commodities established by the United States department of agriculture. For purposes of this chapter, any reference to a grade also includes a reference to a protein analysis or any other factor provided by department rule if the analysis affects the purchase price.

(2) Agricultural commodity standards adopted by the department do not apply to agricultural commodities contracted for before the effective date of the adoption of the standards.

History: **En. Sec. 58, Ch. 539, L. 1983; amd. Sec. 13, Ch. 76, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 76 in (1), near beginning of first sentence, substituted "may" for "shall" and after "all" substituted "agricultural commodities for which a United States department of agriculture grade has not been established and that are bought by commodity dealers and stored" for "all grain", in second sentence, after "grade", inserted "and dockage" and substituted "agricultural commodities" for "grain", and inserted third sentence providing that any reference to a grade includes a reference to a protein analysis if analysis affects purchase price; in (2), in two places, substituted references to agricultural commodity for references to grain; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

U.C.C. — exclusion or modification of warranties as to disease-free seed, 30-2-316.

80-4-705. Rules governing dockage — sample inspection. The department shall adopt rules governing the dockage on inferior grades, which shall apply in all executory contracts entered into after their adoption. If the purchase price depends on terminal weight or grade, the rules control the dockage insofar as dockage affects the purchase price. The department shall also provide for sample inspection of agricultural commodities, adopt rules governing sample inspection, and provide that the sample inspection, when made, is final.

History: En. Sec. 59, Ch. 539, L. 1983; amd. Sec. 14, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in two places, in second sentence, substituted purchase price for references to price to be paid; in third sentence substituted "agricultural commodities" for "grain"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-4-706. Special inspection of agricultural commodities. (1) If agricultural commodities are sold based on Montana grade and are to be shipped from places not provided with state inspection, the buyer, seller, or person making the delivery may have the agricultural commodities inspected by notifying an inspector, who shall have them inspected. After inspection, the inspector shall issue, on request of the buyer, seller, or person delivering the agricultural commodity, an inspector's certificate showing the grade of the agricultural commodity. The person calling for the inspection shall pay a reasonable fee fixed by department rule.

(2) An agricultural commodity that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the agricultural commodity. The charge for the service must at least equal the entire cost of providing it and must be paid by the party calling for the inspection.

History: En. Sec. 60, Ch. 539, L. 1983; amd. Sec. 15, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 throughout section substituted references to agricultural commodities for "grain"; and made minor changes in style. Amendment effective July 1, 1997.

80-4-707. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 61, Ch. 539, L. 1983.

80-4-708. Examination of agricultural commodity cars or trucks at destination. (1) An official agricultural commodity inspector, sampler, or weigher, before opening the doors or lids of a car or truck containing agricultural commodities upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car or truck and determine whether any leakages have occurred while the car or truck was in transit, determine whether the doors or lids were properly secured and sealed at the point of shipment, and make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the official agricultural commodity inspector, sampler, or weigher shall securely close and reseal the opened doors or lids, using the special seal of the department.

(3) A record must be kept by the official agricultural commodity inspectors, samplers, or weighers of all original seals broken, the number of seals, and the date when broken. An official agricultural commodity inspector, sampler, or weigher shall break the seal, weigh, and superintend the loading

of all cars or trucks of agricultural commodities subject to inspection. Any other person who breaks the seal or officially weighs the cars or trucks of agricultural commodities is guilty of a misdemeanor.

History: En. Sec. 62, Ch. 539, L. 1983; amd. Sec. 16, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in two places in (1), in (2), and in four places in (3) substituted references to agricultural commodity for "grain"; in two places in (1) and in (2), after "doors", inserted "or lids"; and in three places in (1) and two places in (3), after references to car, inserted references to truck. Amendment effective July 1, 1997.

80-4-709. Protein testing laboratory. (1) The department shall maintain an official protein testing laboratory so designated by the Grain Standards Act.

(2) No other laboratory may officially certify the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall by rule determine the standards of analysis controlling all other official protein testing laboratories in this state.

(4) The department may by rule determine the form of protein certificates issued by it.

History: En. Sec. 63, Ch. 539, L. 1983.

80-4-710. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 64, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-711. Agricultural commodity sampling — appeal procedure. (1) At the time of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale, each warehouse operator or commodity dealer shall take a representative sample from each load of agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's name marked on the container. A composite sample consisting of a minimum of 1 ½ quarts or 1,050 grams of the representative sample must, upon written request of the depositor, be submitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain a minimum of 1 ½ quarts or 1,050 grams of the remaining sample for 60 days.

(2) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis, the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When an appeal is made, the warehouse operator or commodity dealer shall submit 1 ½ quarts or 1,050 grams of the representative sample to the state grain laboratory for appeal analysis.

(3) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a state grain laboratory analysis, as provided in subsection (1) or (2), the depositor, warehouse operator, or commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its

analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

(4) Each warehouse operator or commodity dealer shall post in a conspicuous place a placard, issued by the department, stating the procedures provided for in this section.

(5) All samples submitted for analysis are the property of the state grain laboratory and subject to its disposition.

(6) An agricultural commodity purchased for resale as seed is exempt from the requirements of this section.

(7) A producer of malting barley may by contract waive the right to submit a sample to the state grain laboratory provided in this section.

History: En. Sec. 21, Ch. 76, L. 1997.

Compiler's Comments

Effective Date: Section 25, Ch. 76, L. 1997, provided that this section is effective July 1, 1997.

80-4-712 through 80-4-720 reserved.

80-4-721. Fees for inspection, testing, and weighing agricultural commodities — disposition — investment. (1) The department shall by rule fix the fees for inspection, testing, and weighing of agricultural commodities.

(2) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of agricultural commodities, must reflect as nearly as possible the actual cost of the services.

(3) All those fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund must be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of agricultural commodities.

(4) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the proper department account in the state special revenue fund.

History: En. Sec. 65, Ch. 539, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 297, L. 1989; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 17, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in (1), (2), and (3) substituted "agricultural commodities" for "grain"; deleted former (2) that read: "Payment of the fees referred to in subsection (1) must be divided equally between the warehouse operator and the holder of the warehouse receipt"; deleted former (3) that read: "(3) Those fees or proceeds are a lien upon the grain until paid"; and made minor changes in style. Amendment effective July 1, 1997.

80-4-722. Records of inspection. (1) The official agricultural commodity inspectors, samplers, and weighers have exclusive control at places provided for state inspection of the weighing and grading of agricultural commodities to be inspected. Suitable books and records must be kept in which must be entered an accurate record of every carload or truckload of agricultural commodities inspected or weighed by them. The records must show for each car or truck:

(a) the number or other designation of the car or truck;

(b) the net weight of the agricultural commodity;

(c) the kind of agricultural commodity and its grade and, if graded below standard No. 1 grade, the reason for the grade.

(2) For each carload or truckload of agricultural commodities, the official agricultural commodity inspector shall give a certificate of inspection, showing the kind and grade of the agricultural commodity, the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true weight and containing a statement on the condition of the car or truck and evidences of leakage or damage, if any.

(3) The inspection and weight certificates must be made available to the warehouse loading or unloading the agricultural commodity, the shipper or the shipper's agent, and the railroad company or other carrier by which the agricultural commodity was shipped or carried.

(4) Official agricultural commodity inspectors and weighers shall also keep an accurate record of all appeals and decisions and a complete record of every official act, which books and records must be open to inspection by any party of interest.

History: En. Sec. 66, Ch. 539, L. 1983; amd. Sec. 18, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in three places in (1), in (1)(b), in (1)(c), in two places in (2), in two places in (3), and in (4) substituted references to agricultural commodity for "grain"; and made minor changes in style. Amendment effective July 1, 1997.

80-4-723. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 67, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-724. Coloration of agricultural commodities treated with injurious or toxic substances — exception. (1) Any agricultural commodity treated with any injurious or toxic substance or chemical must at the same time be colored or dyed a color contrasting with the natural color of the agricultural commodity so that the treated agricultural commodity is readily identifiable as having been treated with an injurious or toxic substance or chemical. This subsection does not apply to the application of pesticides to agricultural commodities according to label directions for the treatment of pests that might be present in the agricultural commodity.

(2) A person who fails to comply with the requirements of this section is subject to the penalty provisions of 80-4-429.

History: En. Sec. 68, Ch. 539, L. 1983; amd. Sec. 19, Ch. 76, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 76 in three places in first sentence in (1) substituted "agricultural commodity" for "grain" and inserted second sentence providing that the subsection does not apply to the application of pesticides to agricultural commodities; inserted (2) providing that a person who fails to comply with the section is subject to penalty; and made minor changes in style. Amendment effective July 1, 1997.

80-4-725. Sale or offering for sale of treated product prohibited. A person may not sell or offer for sale an agricultural commodity that has been treated with any injurious or toxic substance or chemical unless the agricultural commodity has been colored or dyed a color contrasting with the natural color of the agricultural commodity. Section 80-4-724 and this section do not apply to the treatment of an agricultural commodity solely for the killing of insects that might be present. A person violating this section is guilty of a misdemeanor.

History: **En. Sec. 69, Ch. 539, L. 1983; amd. Sec. 20, Ch. 76, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 76 in four places substituted "agricultural commodity" for "grain"; and made minor changes in style. Amendment effective July 1, 1997.

80-4-726. Copies of grades and rules to be furnished and displayed by warehouse operators. (1) The department shall, immediately after the adoption of rules establishing grades fixing dockage, supply all warehouse operators with a copy of the grades and rules. A warehouse operator shall keep a copy on file in a convenient place in each warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice must be posted in a conspicuous place in every warehouse and office, reading "A copy of Montana grades and rules is on file here for information of interested parties".

(2) A warehouse operator shall exhibit a copy of the grades and rules to any interested party at any warehouse or office and permit the interested party to examine the copy.

History: **En. Sec. 70, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.**

80-4-727. Repealed. Sec. 22, Ch. 76, L. 1997.

History: **En. Sec. 71, Ch. 539, L. 1983.**

CHAPTER 5

AGRICULTURAL SEED

Part 1 — Seed Labeling

80-5-101. Repealed.
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80-5-103. Exchange of seed between labelers.
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Part 2 — Licensing

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80-5-204. Screenings — restrictions on movements.
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80-5-208. Deposit of funds — seed account.

Part 3 — Certification

80-5-301. Application of sections.
80-5-302. Rules by Montana state university-Bozeman — certification agencies.
80-5-303. Certification work on self-supporting basis.
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Part 4 — Seed Potato Disease Control Act

80-5-401. Short title.
80-5-402. Definitions.
80-5-403. Imported seed potatoes — restrictions — exceptions.
80-5-404. Planting noncertified seed potatoes prohibited — exceptions.
80-5-405. Enforcement — penalty.

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Vehicle loaded with perishable seed potatoes — when authorities may restrict right to use roadway, 61-10-128.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Part 1
Seed Labeling

Part Cross-References

Definitions relating to agricultural seed, 80-5-120.

80-5-101. Repealed. Sec. 19, Ch. 373, L. 1987.

History: En. Sec. 1, Ch. 361, L. 1969; amd. Sec. 1, Ch. 390, L. 1973; R.C.M. 1947, 3-802.1; amd. Sec. 1, Ch. 464, L. 1983.

80-5-102. Labeling of agricultural seeds. Any person offering for sale a package, parcel, or lot of agricultural seeds, as defined in 80-5-120, that contains 1 pound or more of agricultural seeds, whether in package or in bulk, must have affixed to it a label specifying:

(1) a lot number or other distinguishing mark;

(2) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind". When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(3) variety, as follows:

(a) the following kinds of agricultural seeds shall be labeled to show the variety name or the words "variety not stated":

alfalfa
barley
bean, field
beet, field
brome, smooth
clover, crimson
clover, red
clover, white
corn, field
corn, pop
fescue, tall
flax
millet, foxtail
oat
pea, field
rye
safflower
sorghum
sorghum-sudan hybrid
soybean
sudan grass
sunflower
trefoil, birdsfoot
wheat, club
wheat, common
wheat, durum

(b) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(4) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be

at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as "hybrid" on the label. No one kind or variety of seed may be labeled as "hybrid" if the pure seed contains less than 75% hybrid seed. Any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(a) the percentage of pure seed that is hybrid seed; or

(b) a statement such as "Contains from 75% to 95% hybrid seed";

(5) state or country of origin, if known, of alfalfa, red clover, white clover, native range grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(6) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".

(7) the germination date that must include the calendar month and year in which the germination test was completed;

(8) a purity analysis that must include:

(a) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;

(b) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;

(c) the approximate total percentage by weight of weed seeds;

(d) the approximate percentage by weight of other crop seeds in agricultural seeds; and

(e) the name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of seed;

(9) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the seed;

(10) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:

(a) name of mixture;

(b) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;

(c) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;

(d) approximate percentage by weight of weed seeds as defined in 80-5-120;

(e) approximate percentage by weight of other crop seeds in the mixture of agricultural seeds;

(f) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions established by rule;

(g) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(h) full name and address of the vendor of the mixture.

History: En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977; R.C.M. 1947, 3-802.2(1); amd. Sec. 2, Ch. 464, L. 1983; amd. Sec. 2, Ch. 373, L. 1987.

80-5-103. Exchange of seed between labelers. (1) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed and quantity of each kind. Each container of seed in a lot shall carry a lot number designation.

(2) While seed is in the possession of a licensed seed labeler, it must carry a lot number on each container at all times. When seed is made available for sale or sold, a complete label must be attached to each container of a lot.

History: En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977; R.C.M. 1947, 3-802.2(2); amd. Sec. 3, Ch. 373, L. 1987.

80-5-104. Labeling of vegetable, flower, and indigenous seeds. (1) Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(a) each container of 1 pound or less:

(i) the commonly accepted name of the kind or the kind and variety of the seed;

(ii) the name and address of the person who labeled the seed or who sells the seed within this state;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed by rules adopted under 80-5-105;

(iv) in the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

(A) the percentage of germination;

(B) the percentage of hard seed, if more than 1%;

(C) the month and year the test to determine the data required by this section was completed;

(D) the words "below standard germination" in not less than 8-point boldface type;

(b) each container of more than 1 pound:

(i) the name of the kind and variety of the contents;

(ii) the lot numbers or other lot identification;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed by rules adopted under 80-5-105;

(iv) the percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act;

(v) the percentage of hard seed, if more than 1%;

(vi) the month and year the test to determine the data required by this section was completed;

(vii) the name and address of the person who labeled the seed or who sells the seed within this state.

(2) Indigenous seeds, as defined in 80-5-120, in amounts of 1 pound or more, whether in package or bulk, must be labeled with the following information:

(a) the statement "Labeled only for reclamation purposes";

(b) lot number or other distinguishing mark;

(c) the common name, genus, species, and subspecies when applicable, including the name of each kind of seed present in excess of 5%. When two or more kinds of seed are named on the label, the label shall specify the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage must apply to seed of the kind named. If the name of the variety is given, the name may be associated with the name of the kind. The percentage in this case may be shown as "pure seed" and must apply only to seed of the variety named.

(d) state or country of origin, if known. If the origin is unknown, that fact shall be stated.

(e) the approximate percentage of viable seed, together with the date of test. When labeling mixtures, the percentage viability of each kind shall be stated.

(f) the approximate percentage by weight of pure seed, meaning the freedom of seed from inert matter and from other seeds;

(g) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter;

(h) the approximate total percentage by weight of other seeds;

(i) the name and approximate number of each kind of species of restricted noxious weed seeds occurring per pound of seed;

(j) the full name and address of the person, firm, or corporation selling the seed.

History: En. Sec. 3, Ch. 361, L. 1969; R.C.M. 1947, 3-802.3; amd. Sec. 3, Ch. 464, L. 1983; amd. Sec. 4, Ch. 373, L. 1987.

80-5-105. Prohibitions. A person, firm, corporation, partnership, or association may not sell or transport for use in planting in this state any seed that:

(1) contains prohibited noxious weed seeds;

(2) contains restricted noxious weed seeds in excess of either:

(a) the maximum numbers per pound allowed under rules adopted by the department; or

(b) the maximum numbers per pound as follows:

Common name	Species	Number of seeds per pound
dyers woad	(Isatis tinctoria)	0
spotted knapweed	(Centaurea maculosa)	0
wild oats	(Avena fatua)	45 (per pound of grass seed) 9 (per pound of cereal seed)

(3) contains in excess of 2% or more of weed seed;

(4) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:

(a) the container is hermetically sealed;

(b) the seed has been preconditioned as to moisture content;

(c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail;

(d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act, 7 U.S.C. 1551 through 1610, amended October 15, 1967, with subsequent revisions;

(5) is labeled, advertised, or otherwise represented as being certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(6) is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321, et. seq.) without the authority of the owner of the variety or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety.

History: En. Sec. 4, Ch. 361, L. 1969; amd. Sec. 12, Ch. 390, L. 1973; Sec. 3-820, R.C.M. 1947; amd. and redes. 3-802.4 by Sec. 45, Ch. 218, L. 1974; amd. Sec. 11, Ch. 13, L. 1977; amd. Sec. 5, Ch. 315, L. 1977; R.C.M. 1947, 3-802.4; amd. Sec. 5, Ch. 373, L. 1987.

80-5-106. Repealed. Sec. 19, Ch. 373, L. 1987.

History: En. Sec. 5, Ch. 361, L. 1969; Sec. 3-821, R.C.M. 1947; amd. and redes. 3-802.5 by Sec. 46, Ch. 218, L. 1974; R.C.M. 1947, 3-802.5.

80-5-107. Exemptions. Seed or mixtures of same shall be exempt from the provisions of this part:

(1) when possessed, exposed for sale, or sold for food purposes only;

(2) when sold to merchants or dealers to be conditioned before being sold or offered for sale for seeding purposes;

(3) when in store for the purpose of conditioning or not possessed, sold, or offered for sale for seeding purposes within the state.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R.C.M. 1921; re-en. Sec. 3595, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969; R.C.M. 1947, 3-803; amd. Sec. 4, Ch. 464, L. 1983; amd. Sec. 6, Ch. 373, L. 1987.

80-5-108. Analysis by seed laboratory — reports. The seed laboratory of the agricultural experiment station shall analyze and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station and the department determine. The laboratory shall report to the department all violations as they appear. It may also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R.C.M. 1921; re-en. Sec. 3597, R.C.M. 1935; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977; R.C.M. 1947, 3-805(1); amd. Sec. 7, Ch. 373, L. 1987.

Cross-References

Rules for enforcement of interstate embargo, including inspection provisions, 80-7-702.

80-5-109. Testing of submitted samples. The seed laboratory shall analyze any official seed samples taken from seed lots offered for sale in the state or submitted by the department, using methods such as those established under the Federal Seed Act and the procedural guidelines developed by the association of official seed analysts.

History: En. 3-806.1 by Sec. 4, Ch. 390, L. 1973; R.C.M. 1947, 3-806.1; amd. Sec. 8, Ch. 373, L. 1987.

80-5-110. Laboratory testing of samples — fees. Any citizen of this state may request the seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates established by rule of the department as recommended by the agricultural experiment station. All fees collected by the seed laboratory shall be used to defray the expenses incurred by the laboratory under 80-5-102 through 80-5-105 and 80-5-107 through 80-5-113.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R.C.M. 1921; re-en. Sec. 3599, R.C.M. 1935; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951; amd. Sec. 5, Ch. 390, L. 1973; amd. Sec. 14, Ch. 13, L. 1977; R.C.M. 1947, 3-807; amd. Sec. 9, Ch. 373, L. 1987.

80-5-111. Certificate of test presumptive evidence. The certificate of the seed laboratory, giving results of any examinations, analyses, or tests of any seed samples made under the authority of the department, is presumptive evidence of the correctness of the facts stated in it.

History: **En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R.C.M. 1921; re-en. Sec. 3600, R.C.M. 1935; amd. Sec. 9, Ch. 88, L. 1939; amd. Sec. 6, Ch. 390, L. 1973; R.C.M. 1947, 3-808; amd. Sec. 10, Ch. 373, L. 1987.**

80-5-112. Enforcement — rules. The department shall administer and enforce 80-5-102 through 80-5-105 and 80-5-107 through 80-5-113. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of seed which the department finds in violation of 80-5-102 through 80-5-105 and 80-5-107 through 80-5-113. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reconditioning, labeling, or otherwise, and when, in the judgment of the department, the requirements of 80-5-102 through 80-5-105 and 80-5-107 through 80-5-113 have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under 80-5-102 through 80-5-105 and 80-5-107 through 80-5-113.

History: **En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R.C.M. 1921; re-en. Sec. 3597, R.C.M. 1935; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977; R.C.M. 1947, 3-805(2); amd. Sec. 5, Ch. 464, L. 1983; amd. Sec. 11, Ch. 373, L. 1987.**

80-5-113. Penalty. Any person, firm, or corporation which sells or offers or exposes for sale or distribution in the state any seed for seeding purposes without complying with the requirements of 80-5-102 through 80-5-105 and 80-5-107 through 80-5-113 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $300 plus costs of such prosecution and upon conviction of the second or any subsequent offense shall be fined not less than $500 or more than $1,000 plus costs of such prosecution.

History: **En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R.C.M. 1921; amd. Sec. 2, Ch. 110, L. 1929; re-en. Sec. 3596, R.C.M. 1935; amd. Sec. 5, Ch. 88, L. 1939; amd. Sec. 3, Ch. 390, L. 1973; amd. Sec. 12, Ch. 13, L. 1977; R.C.M. 1947, 3-804; amd. Sec. 12, Ch. 373, L. 1987.**

80-5-114 through 80-5-119 reserved.

80-5-120. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.

(2) "Approximate percentage" and "approximate number" mean the percentage or number with the variations above and below that value as allowed according to the tolerance limits defined in the rules for seed testing adopted by the association of official seed analysts.

(3) "Bin-run seed sales" means seed sales from one farmer to another farmer with seeds sold "as is", without guaranty or analysis.

(4) "Certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection (4)(a).

(5) "Controlling the pollination" means to use a method of hybridization that will produce pure seed which is at least 75% hybrid seed. Hybrid designations must be treated as variety names.

(6) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(7) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species.

(8) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(9) "Labeling" means to affix, before offering the seed for sale, on the exterior of the container in a conspicuous place a label written or printed in the English language that has not been altered, giving the information required under this chapter.

(10) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

(11) "Name of the state in which the seed was grown" means any of the several states of the United States or a foreign country.

(12) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(13) "Percentage of germination" means the percentage of seeds that show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the association of official seed analysts.

(14) "Percentage viability" means the percentage of live seed capable of producing a normal seedling under optimum growing conditions, after all forms of dormancy have been overcome, if present.

(15) "Person" means any individual, firm, partnership, corporation, or association.

(16) "Prohibited noxious weed seeds" means the seeds of perennial plants that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts and that, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds include the seeds of:

(a) leafy spurge (Euphorbia esula);

(b) Russian knapweed (Centaurea repens); and

(c) plants that are designated by rule of the department as prohibited noxious weeds.

(17) "Protected variety" means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

(18) "Restricted noxious weed seeds" means the seeds and bulbets of any plant designated as restricted weed seeds under rules adopted by the department. The term includes the seeds of:

(a) spotted knapweed (Centaurea maculosa); and

(b) dyers woad (Isatis tinctoria).

(19) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

(20) "Seed conditioning plant" means any place of business that repackages, conditions, blends, treats, or otherwise manipulates agricultural seeds.

(21) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds.

(22) "Seed labeler" means any person affixing labels to agricultural seeds, with his name and address listed as required in 80-5-102, when such seed is distributed in Montana.

(23) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(24) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(25) "Weed seeds" means the seeds or bulbets of all plants generally recognized as weeds within this state and includes noxious weed seeds.

History: En. Sec. 1, Ch. 373, L. 1987.

80-5-121. Inspection. To enforce this chapter, the department may enter, at reasonable times, any public or private premises, including any vehicle of transport, and upon entry to the premises, the department may obtain samples, examine seeds and labels, inspect equipment, and review records relating to distribution of seed in Montana. The department may take any sample of seeds as may be required; however, the department shall pay, upon request, the firm current market value for each sample.

History: En. Sec. 17, Ch. 373, L. 1987.

80-5-122. Publication of reports. The department may publish the names and addresses of persons licensed under this chapter.

History: En. Sec. 18, Ch. 373, L. 1987.

Part 2
Licensing

Part Cross-References
Definitions relating to agricultural seed, 80-5-120.

80-5-201. Repealed. Sec. 19, Ch. 373, L. 1987.

History: En. Sec. 1, Ch. 442, L. 1973; amd. Sec. 1, Ch. 315, L. 1977; R.C.M. 1947, 3-310(2) thru (12); amd. Sec. 6, Ch. 464, L. 1983; amd. Sec. 72, Ch. 539, L. 1983.

80-5-202. Licensing — application — fee. (1) All seed conditioning plants shall obtain a license from the department for each plant before doing business in this state; however, a seed grower, when conditioning seed from his own production, is not required to be licensed under this part.

(2) Each conditioning plant must post in a conspicuous location in the facility:

(a) its fees for conditioning services; and

(b) the license designation for the facility.

(3) All seed labelers and growers who label or affix written claims to their seed shall obtain a license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from his own production; and

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and his name and address.

(4) A person may not sell or distribute seed in Montana without obtaining a seed dealer's license from the department for each place where seed is located, except for:

(a) a person who distributes seed only in sealed packages of 10 pounds or less that are properly labeled;

(b) a Montana certified seed grower when selling certified seed from his own production; and

(c) a grain producer when making bin-run seed sales.

(5) Each person selling seed from a location other than the licensed place must be listed on the application for license.

(6) The department shall set by rule the period for which a license is issued under this section.

(7) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed.

(8) Each license shall cost no more than $50 a year. The fee must include the cost of application for a license and must be nonrefundable. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(9) An application for a license under this section must be made in a manner and on forms provided by the department. The application must contain among other things:

(a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;

(b) a sample label if the application is for a seed labeler license; and

(c) a list of persons selling seed if the application is for a seed dealer's license.

(10) Seed dealers shall provide with all shipments of seed a bill of lading or other evidence of delivery that includes:

(a) the names of:

(i) the seller;

(ii) the shipper, if other than the seller;

(iii) the buyer; and

(iv) the receiver, if other than the buyer; and

(b) the destination where the seed will be first unloaded.

History: En. Sec. 2, Ch. 442, L. 1973; amd. Sec. 2, Ch. 315, L. 1977; R.C.M. 1947, 3-311; amd. Sec. 7, Ch. 20, L. 1979; amd. Sec. 7, Ch. 464, L. 1983; amd. Sec. 73, Ch. 539, L. 1983; amd. Sec. 13, Ch. 373, L. 1987; amd. Sec. 2, Ch. 446, L. 1989.

80-5-203. Repealed. Sec. 19, Ch. 373, L. 1987.

History: En. Sec. 4, Ch. 442, L. 1973; amd. Sec. 3, Ch. 315, L. 1977; R.C.M. 1947, 3-313; amd. Sec. 8, Ch. 464, L. 1983; amd. Sec. 74, Ch. 539, L. 1983.

80-5-204. Screenings — restrictions on movements. All screenings, whether from seed conditioning plants or other sources, represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in 80-5-120 shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this part are met.

(2) The department may adopt rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

History: En. Sec. 3, Ch. 442, L. 1973; R.C.M. 1947, 3-312; amd. Sec. 9, Ch. 464, L. 1983; amd. Sec. 14, Ch. 373, L. 1987.

80-5-205. Violations. The following acts caused within the state of Montana are prohibited:

(1) the failure or refusal to obtain a license as required in 80-5-202;

(2) the misbranding or mislabeling of seed;

(3) the violation or failure to comply with rules issued under the authority of this part.

History: En. Sec. 5, Ch. 442, L. 1973; R.C.M. 1947, 3-314; amd. Sec. 15, Ch. 373, L. 1987.

80-5-206. Rules — promulgated by department. The department is authorized to promulgate necessary rules as authorized by this part. All rules are to be promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 442, L. 1973; R.C.M. 1947, 3-315; amd. Sec. 8, Ch. 20, L. 1979.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Department defined, 80-1-101.

80-5-207. Violation — cancellation of license — enforcement proceedings. (1) Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee, provided that the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(2) A person who violates or aids in the violation of any provision of this chapter or rules adopted under this chapter is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (a) may be made in conjunction with any other warning, order, or administrative action by the department under the authority of this part.

(b) a misdemeanor punishable by a fine of not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for each subsequent violation.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (2)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in this part may be construed as requiring the department or its representatives to report violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

(5) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(6) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this part or any rule promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(7) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon the act.

History: En. Sec. 7, Ch. 442, L. 1973; amd. Sec. 4, Ch. 315, L. 1977; R.C.M. 1947, 3-316; amd. Sec. 16, Ch. 373, L. 1987; amd. Sec. 1, Ch. 602, L. 1993.

80-5-208. Deposit of funds — seed account. (1) There is an account in the state special revenue fund to be known as the seed account. All inspection, license, and penalty fee revenue collected under this chapter must be deposited in the seed account.

(2) Money received as revenue under this chapter not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the seed account must be deposited in the seed account.

History: En. Sec. 8, Ch. 442, L. 1973; R.C.M. 1947, 3-317; amd. Sec. 2, Ch. 602, L. 1993.

Cross-References

State treasury fund structure, 17-2-102.

Part 3
Certification

Part Cross-References

U.C.C. — exclusion or modification of warranties as to disease-free seed, 30-2-316.

Definitions relating to agricultural seed, 80-5-120.

Seed Potato Disease Control Act, Title 80, ch. 5, part 4.

80-5-301. Application of sections. A person, firm, association, or corporation which issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale or sold or offered for sale in which the words "Montana state certified", "state certified", "Montana certified", or similar words or phrases are used or employed is subject to 80-5-301 through 80-5-305.

History: En. Sec. 1, Ch. 11, L. 1951; amd. Sec. 43, Ch. 218, L. 1974; R.C.M. 1947, 3-809.

80-5-302. Rules by Montana state university-Bozeman — certification agencies. Every person, firm, association, or corporation subject to the provisions of 80-5-301 through 80-5-305 shall observe, perform, or comply with all rules and standards for seed certification established or specified by Montana state university-Bozeman, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements, and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification within the provisions of 80-5-301 through 80-5-305 shall be made or authorized except by or through said university.

History: En. Sec. 2, Ch. 11, L. 1951; amd. Sec. 7, Ch. 390, L. 1973; R.C.M. 1947, 3-810; amd. sec. 36, Ch. 308, L. 1995.

80-5-303. Certification work on self-supporting basis. Certification work, whether conducted by said university or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951; amd. Sec. 8, Ch. 390, L. 1973; R.C.M. 1947, 3-811.

80-5-304. Withholding certification. The said university or its designated agency or agencies may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of 80-5-301 through 80-5-305, including standards and rules laid down by the said university or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951; amd. Sec. 10, Ch. 390, L. 1973; R.C.M. 1947, 3-813.

80-5-305. Unlawful use of certification — penalty. A person, firm, association, or corporation may not issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, represent seeds or plant parts as certified, or use the terms "Montana state certified", "state certified", "Montana certified", or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who violates 80-5-301 through 80-5-305 is guilty of a misdemeanor and shall be fined not less than $100 or more than $500 for each offense.

History: En. Sec. 6, Ch. 11, L. 1951; amd. Sec. 11, Ch. 390, L. 1973; amd. Sec. 44, Ch. 218, L. 1974; R.C.M. 1947, 3-814.

Part 4

Seed Potato Disease Control Act

80-5-401. Short title. This part may be cited as the "Seed Potato Disease Control Act".

History: En. Sec. 1, Ch. 610, L. 1989.

80-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Certified seed potatoes" means potato seed stock that has passed limited field and storage inspections and that has been grown in accordance with the certification rules and regulations of an official seed potato certifying agency of the state or country of origin and certified as such.

(2) "Commercial purpose" means planting or propagating potatoes for the purpose of selling, trading, or otherwise exchanging for profit.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "Person" means an individual, firm, partnership, corporation, company, association, or separate business or legal entity.

(5) "Seed potatoes" or "potato seed" means all varieties of potato tubers, stems, and other plant parts of the herb plant known as Solanum tuberosum that are intended or used for seed purposes, planting, propagation, or reproduction.

History: En. Sec. 2, Ch. 610, L. 1989; amd. Sec. 1, Ch. 59, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 59 inserted definition of commercial purpose; and made minor changes in style.

80-5-403. Imported seed potatoes — restrictions — exceptions. (1) To control and prevent the spread of contagious diseases among seed potato stock,

seed potatoes may not be imported into this state for any commercial purpose unless the seed potatoes are:

(a) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(b) subject to inspection at the Montana receiving point by a federal or state-federal standard grade inspector;

(c) shipped in a clean, disinfected container or transportation carrier; and

(d) accompanied by a United States department of agriculture or state of origin certification of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label.

(2) The provisions of subsection (1) do not apply to any unit of the Montana university system when it is importing into this state potato seed for research or educational purposes.

(3) Seed or commercial potatoes, equipment, machinery, bags, or containers known to be diseased or contaminated with bacterial ring rot, golden nematode, or other diseases designated by department rule may not be brought into this state.

History: En. Sec. 3, Ch. 610, L. 1989; amd. Sec. 2, Ch. 59, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 59 in (1), in introductory clause after "commercial", deleted "or agricultural"; in (1)(b), at beginning, substituted "subject to inspection" for "inspected"; deleted former (1)(b) that read: "(b) seed or commercial potatoes, equipment, machinery, bags, or containers known to be diseased or contaminated with bacterial ring rot, nematode, or tuber moth may not be brought into this state"; in (2) substituted "subsection (1)" for "this section"; in (3) substituted language concerning diseased or contaminated material not being brought into state for "The department shall quarantine seed potatoes imported into the state in violation of this section. The department shall adopt rules governing quarantines and regulating the use or disposition of quarantined seed potatoes"; and made minor changes in style.

80-5-404. Planting noncertified seed potatoes prohibited — exceptions. (1) To control and prevent the spread of contagious diseases and viruses among seed potato stock, it is unlawful for any person to plant or produce potatoes, either seed or commercial, from any seed potato stock unless the seed potatoes are:

(a) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(b) subject to inspection at the receiving point by a federal or state-federal standard grade inspector if from a source outside the county;

(c) shipped in a clean, disinfected container or transportation carrier; and

(d) for each individual lot of seed potatoes, accompanied by a United States department of agriculture or state of origin certificate of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label.

(2) The provisions of this section do not apply to:

(a) potatoes grown in home gardens;

(b) potatoes grown by any unit of the Montana university system for research or educational purposes.

History: En. Sec. 4, Ch. 610, L. 1989; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 3, Ch. 59, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 59 in (1), near middle after "unlawful", deleted "after January 1, 1990"; in (1)(b), at beginning, substituted "subject to inspection" for "inspected"; deleted former (2) that read: "The provisions of this section apply only to counties where Montana certified seed potatoes are produced and certified by Montana state university-Bozeman during the preceding crop year as provided for in 80-5-301 through 80-5-305. On or before November 15 of each year, the department shall compile from official certification records at Montana state university-Bozeman a list of counties affected by this section and shall publish the provisions of this section throughout those counties"; and made minor changes in style.

80-5-405. Enforcement — penalty. (1) The department shall administer and enforce the provisions of this part.

(2) When potatoes are found to be in violation of this part, the department may issue orders:

(a) restricting transportation of the potatoes;

(b) requiring treatment or destruction of the potatoes; or

(c) requiring other disease prevention or suppression measures.

(3) The department may adopt rules governing quarantines to prevent the intrastate or interstate movement of diseases of potatoes from infested areas and adjacent areas. Quarantines may restrict or prohibit the transportation of plants, seed potatoes, machinery, equipment, soil, or other material capable of transporting the disease in any stage of development.

(4) A person violating any provision of this part is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

History: En. Sec. 5, Ch. 610, L. 1989; amd. Sec. 4, Ch. 59, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 59 inserted (2) allowing the Department to issue orders for potatoes in violation of part; inserted (3) allowing the Department to adopt rules governing the quarantine of potatoes; and made minor changes in style.

CHAPTER 6

APICULTURE

Part 1 — Registration—Apis Bees

80-6-101. Definitions.
80-6-102. Registration.
80-6-103. Changing locations — enlarging or selling apiaries.
80-6-104. Apiaries — termination of rights — abandonment.
80-6-105. Registration fees.
80-6-106 through 80-6-110 reserved.
80-6-111. General apiary registrations.
80-6-112. Pollination apiary registrations.
80-6-113. Landowner apiary registrations.
80-6-114. Hobbyist apiary registrations.
80-6-115. Restrictions on apiary locations.

Part 2 — Inspection and Certification—Apis Bees

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Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

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Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

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Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Part 1

Registration — Apis Bees

80-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means an apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata) and those honeybees Africanized by interbreeding with the African honeybee, as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

(17) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift.

History: En. Sec. 1, Ch. 79, L. 1947; amd. Sec. 1, Ch. 475, L. 1973; Sec. 82-805, R.C.M. 1947; amd. and redes. 3-3101 by Sec. 128, Ch. 218, L. 1974; R.C.M. 1947, 3-3101; amd. Sec. 1, Ch. 125, L. 1981; amd. Sec. 1, Ch. 198, L. 1987; amd. Sec. 1, Ch. 9, L. 1991; amd. Sec. 1, Ch. 491, L. 1993.

80-6-102. Registration. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary. There are four classes of apiary registration. The conditions under which the department may issue certificates of registration for each class are specified in 80-6-111 through 80-6-115.

(2) Applications shall be made to the department for registration application blanks.

(3) Registration application blanks shall be furnished by the department. The applicant shall provide the following information:

(a) a statement of the name and place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located and, when the application is for a new apiary being registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented to the apiary being located on his land;

(e) the date when the apiary was first established;

(f) the class of apiary registration for which application is being made; and

(g) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, the number of colonies of bees or size of the apiary authorized under the registration, and the class of apiary authorized by the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or pests or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department shall be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee or $10, whichever is greater. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department.

The notification shall be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.

(10) Any person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register the same as provided in this part is guilty of a misdemeanor and upon conviction thereof is subject to the penalties set forth in 80-6-303.

(11) Nothing contained in this section or in 80-6-111 through 80-6-115 shall be construed as invalidating, canceling, amending, terminating, or extending any certificate of registration issued by the department prior to October 1, 1981. All such previously issued certificates of registration remain in effect for the period for which they were issued; subject, however, to forfeiture, lapse, abandonment, and termination in the manner provided by law.

History: En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 2, Ch. 28, L. 1953; amd. Sec. 3, Ch. 475, L. 1973; Sec. 82-807, R.C.M. 1947; amd. and redes. 3-3103 by Sec. 130, Ch. 218, L. 1974; amd. Sec. 2, Ch. 25, L. 1977; R.C.M. 1947, 3-3103; amd. Sec. 2, Ch. 125, L. 1981; amd. Sec. 2, Ch. 198, L. 1987.

80-6-103. Changing locations — enlarging or selling apiaries. (1) An owner of an established registered apiary may not change the location of the apiary without first receiving from the department authorization to establish the new apiary. In making the application, he shall specify the location of the apiary with the same particularity as in the application for original registration. If the new apiary is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate. Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) A registered apiary may be sold or transferred to a purchaser subject to parts 1 through 3 if all bees and equipment on the apiary are sold to the purchaser.

(3) No person may increase the number of hives on an apiary to exceed the number of hives authorized by his certificate of registration for that apiary, except that a person may increase the number of hives on a general apiary beyond the number authorized by the certificate of registration in order to protect his bees during adverse weather or crop conditions or to protect his bees and hives from bears or other predators. A person may also enlarge a general apiary during the spring buildup and in the fall after the end of the honey season in order to gather his bees for shipment out of the state or to winter his bees on that apiary.

(4) A person enlarging an apiary so as to exceed the number of hives herein allowed is guilty of a misdemeanor and is subject to the penalties set forth in 80-6-303.

History: En. 3-3104 by Sec. 131, Ch. 218, L. 1974; amd. Sec. 3, Ch. 25, L. 1977; R.C.M. 1947, 3-3104; amd. Sec. 8, Ch. 125, L. 1981.

80-6-104. Apiaries — termination of rights — abandonment. (1) The registration of an apiary which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the certificate of registration terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease or pest control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, or any apiary not registered in accordance with 80-6-102, may be considered an abandoned apiary and may be seized by the department. Any pest-infected or diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale is deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a certified letter sent to the owner's last address registered with the department is sufficient notice under this section.

History: **En. 3-3105 by Sec. 132, Ch. 218, L. 1974; amd. Sec. 4, Ch. 25, L. 1977; R.C.M. 1947, 3-3105; amd. Sec. 3, Ch. 198, L. 1987.**

80-6-105. Registration fees. (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

1 to 10 colonies of bees	$ 20
11 to 200 colonies	50
201 to 500 colonies	80
501 to 1,000 colonies	140
1,001 to 3,000 colonies	200
3,001 to 5,000 colonies	280
5,001 colonies and upward	400

(2) If, after registration, additional or new colonies are authorized for a registered apiary, fees must be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year.

History: **En. Sec. 4, Ch. 79, L. 1947; amd. Sec. 1, Ch. 175, L. 1973; amd. Sec. 4, Ch. 475, L. 1973; Sec. 82-808, R.C.M. 1947; amd. and redes. 3-3106 by Sec. 133, Ch. 218, L. 1974; amd. Sec. 5, Ch. 25, L. 1977; R.C.M. 1947, 3-3106; amd. Sec. 2, Ch. 300, L. 1979; amd. Sec. 4, Ch. 198, L. 1987; amd. Sec. 2, Ch. 491, L. 1993.**

Cross-References

Disposition of fees, 80-6-302.

80-6-106 through 80-6-110 reserved.

80-6-111. General apiary registrations. (1) In order to control, limit, and prevent the spread of bee diseases, pests, and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow of established apiaries, general apiaries registered to different persons on October 1, 1981, must be located 3 or more miles apart, except as otherwise provided in this part. The department shall not register or issue a certificate of registration for any general apiary that is located less than 3 miles from a general apiary registered to another person, except as otherwise provided in this section.

(2) A person may register a general apiary that is situated less than 3 miles from another general apiary he has registered so long as the location of the general apiary being applied for is 3 or more miles from general apiaries registered to other persons.

(3) A general apiary may be registered even though it is less than 3 miles from any registered pollination apiary, landowner apiary, or hobbyist apiary.

(4) A person with an existing apiary that is located less than 3 miles from an existing general apiary registered to another person may register his apiary as a general apiary under the following conditions:

(a) his apiary was established and registered with the department as a general apiary under the department's rules in effect prior to July 1, 1981;

(b) his apiary is registered with the department as a general apiary as of July 1, 1981; and

(c) the registration of his apiary has not been forfeited or abandoned under the provisions of 80-6-102(9) or 80-6-104.

History: En. Sec. 3, Ch. 125, L. 1981; amd. Sec. 5, Ch. 198, L. 1987.

80-6-112. Pollination apiary registrations. (1) The department may grant pollination apiary registrations to commercial seed and fruit producers or other commercial agricultural producers under the following conditions:

(a) (i) the applicant must own, lease, or rent the land upon which the pollination apiary is to be located and the applicant must use the land for the purpose of growing a commercial seed, fruit, or other crop which is dependent upon bees or other insects for pollination;

(ii) the applicant does not own the bees or the hives which are to be placed upon the pollination apiary; and

(iii) the only purpose of the apiary is to pollinate a commercial agricultural crop.

(b) The applicant shall provide the department with all pertinent information necessary to determine if pollination apiaries are needed to pollinate the applicant's crop adequately.

(c) The department may refuse to register a pollination apiary based upon its own investigation of the matter, but if the department approves the application, it shall specify the number and location of pollination apiaries needed for the purpose of pollinating the applicant's commercial agricultural crop adequately.

(2) A pollination apiary registration is valid only for the time period specified by the department, and all pollination apiaries must be removed within 2 weeks after the full bloom period of the crop to be pollinated.

(3) No certificate of registration of a pollination apiary may be leased, assigned, or transferred and no person other than the pollination apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

History: En. Sec. 4, Ch. 125, L. 1981.

80-6-113. Landowner apiary registrations. (1) The department may grant landowner apiary registrations under the following conditions:

(a) The applicant must be a landowner, as defined in 80-6-101, and must own the land upon which the apiary will be located.

(b) The applicant must own the bees and the hives that will be placed on the apiary.

(c) The bees and the hives must be personally managed and operated by the applicant.

(2) No certificate of registration of a landowner apiary may be leased, assigned, or transferred, and no person other than the landowner apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

History: En. Sec. 5, Ch. 125, L. 1981.

80-6-114. Hobbyist apiary registrations. (1) The department may grant hobbyist apiary registrations to hobbyist beekeepers under the following conditions:

(a) The applicant must not own a total of more than five hives, and all of the hives must be placed on the hobbyist apiary.

(b) The applicant must own the bees and the hives and must personally manage and operate the bees and the hives.

(c) Only one hobbyist registration is allowed an applicant and only two hobbyist apiary registrations are allowed a family unit.

(d) If the department determines that too many hobbyist apiaries are being registered within too close proximity of each other or of other established apiaries so that there is or may be danger of the spread of bee diseases, pests, or other contagious or infectious diseases among bees or apiaries or that there will be interference with the proper feeding and honey flow of established apiaries, the department may refuse to grant any further hobbyist registrations in the locality and area of the danger, in accordance with 80-6-102(6).

(2) No certificate of registration of a hobbyist apiary may be leased, assigned, or transferred, and no person other than the hobbyist apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

History: En. Sec. 6, Ch. 125, L. 1981; amd. Sec. 6, Ch. 198, L. 1987.

80-6-115. Restrictions on apiary locations. Pollination apiaries, landowner apiaries, and hobbyist apiaries may be located less than 3 miles from pollination apiaries, landowner apiaries, hobbyist apiaries, and general apiaries registered to other persons. General apiaries may be located within 3 miles of one another only under the provisions of 80-6-111.

History: En. Sec. 7, Ch. 125, L. 1981.

Part 2

Inspection and Certification — Apis Bees

80-6-201. Apiaries — powers and duties of the department. (1) To prevent the spread of pests and contagious and infectious disease among bees and apiaries, the department may:

(a) order the transfer of colonies of bees from hives or containers that cannot be properly examined for brood or other diseases to other hives or containers;

(b) order disinfection of any bee, beehive, brood comb, or any other equipment that is infected or contaminated with disease or pests and burn any infected or contaminated bee, beehive, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least 5 days before the date the property will be burned. The notice must be given by certified mail or personal service upon the owner or person in charge of the property.

(c) quarantine any apiary where pests, foulbrood, or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment under quarantine unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine must be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place, and a copy must be personally served or sent by certified mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(d) establish by rule interior and exterior quarantines to prevent the entry or spread of diseases or pests that are not known to occur in Montana;

(e) inspect apiaries, hives, equipment, or premises for the presence of disease or pests;

(f) promulgate and enforce rules adopted pursuant to parts 1 through 3.

(2) A person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 80-6-303.

(3) The department may provide disease and pest inspection, sampling, and laboratory analysis services for a fee. The department shall adopt rules setting the fee commensurate with costs and establishing procedures for sampling and analysis.

(4) The department may enter into agreements with the United States department of agriculture, other federal agencies, other states, municipal authorities, and individual Montana beekeepers in carrying out the provisions of this part.

History: En. Sec. 2, Ch. 79, L. 1947; amd. Sec. 1, Ch. 28, L. 1953; amd. Sec. 2, Ch. 475, L. 1973; Sec. 82-806, R.C.M. 1947; amd. and redes. 3-3102 by Sec. 129, Ch. 218, L. 1974; amd. Sec. 1, Ch. 25, L. 1977; R.C.M. 1947, 3-3102; amd. Sec. 7, Ch. 198, L. 1987; amd. Sec. 2, Ch. 9, L. 1991.

80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) A person may not transport or bring into the state bees or used beekeeping equipment or containers, including honey to be extracted, unless under a compliance agreement or certified and duly marked as being apparently pest- and disease-free by an official responsible for apiary regulations of the state from which they are being moved. The department must be advised in advance of the date of entry and the destination of the bees or material. Used equipment or bees transported into the state may be quarantined by the department, in accordance with 80-6-201(1)(c), from the time they enter the state until they have been inspected and found to be apparently free of pests and diseases or until they have been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as being apparently pest- and disease-free bees or beekeeping equipment to be transported from Montana to a state that requires an inspection in the state of origin.

(2) (a) The costs of making the inspections provided for in subsection (1) must be paid in advance by the owner of the bees or equipment.

(b) Inspection fees for persons without a valid Montana compliance agreement must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;
(ii) necessary traveling expenses;
(iii) an hourly rate established by department rule; and
(iv) a fee of $50 for the issuance of a certificate of health.

(c) Persons transporting bees interstate with a valid Montana compliance agreement shall pay inspection fees that include:

(i) per diem pursuant to Title 2, chapter 18, part 5;
(ii) necessary traveling expenses; and
(iii) a fee of $50 for the issuance of a certificate of health.

(d) If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of bees or beekeeping materials, including honey for extracting, from that other state must be denied unless the materials, bees, or honey is first inspected by the department and there is obtained from it a certificate of inspection showing that the materials, bees, or honey is apparently free from pests and contagious or infectious disease. The costs of making the inspection must be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;
(ii) necessary traveling expenses;
(iii) an hourly rate established by department rule; and
(iv) a fee of $50 for the issuance of the certificate of inspection.

History: En. Sec. 5, Ch. 79, L. 1947; amd. Sec. 3, Ch. 28, L. 1953; amd. Sec. 5, Ch. 475, L. 1973; Sec. 82-809, R.C.M. 1947; amd. and redes. 3-3107 by Sec. 134, Ch. 218, L. 1974; amd. Sec. 6, Ch. 25, L. 1977; R.C.M. 1947, 3-3107; amd. Sec. 4, Ch. 300, L. 1979; amd. Sec. 8, Ch. 198, L. 1987; amd. Sec. 3, Ch. 9, L. 1991.

80-6-203. Importation of bees in combless packages. A person or common carrier may not transport or bring into this state bees in combless packages unless they are accompanied by a certificate of health issued by the official inspector of the state or country from which they came.

History: En. Sec. 6, Ch. 79, L. 1947; Sec. 82-810, R.C.M. 1947; amd. and redes. 3-3108 by Sec. 135, Ch. 218, L. 1974; R.C.M. 1947, 3-3108.

Part 3
General Provisions — Apis Bees

80-6-301. Orders effective until reversed or modified by court. An order or rule adopted by the department, including an order refusing a permit for the establishment of a new apiary location, is effective until reversed or modified by a final decision of a court of competent jurisdiction and while such action is pending, as defined in 25-1-103. An injunction or other process or writ may not be issued by a court restraining enforcement until that final determination.

History: En. Sec. 10, Ch. 79, L. 1947; amd. Sec. 7, Ch. 475, L. 1973; Sec. 82-814, R.C.M. 1947; amd. and redes. 3-3112 by Sec. 139, Ch. 218, L. 1974; amd. Sec. 23, Ch. 13, L. 1977; R.C.M. 1947, 3-3112.

80-6-302. Disposition of fees. Registration and inspection fees collected under parts 1 through 3 shall be transmitted by the department to the state treasurer, who shall deposit the moneys to the credit of the general fund.

History: En. Sec. 7, Ch. 79, L. 1947; amd. Sec. 6, Ch. 475, L. 1973; Sec. 82-811, R.C.M. 1947; amd. and redes. 3-3109 by Sec. 136, Ch. 218, L. 1974; R.C.M. 1947, 3-3109.

Cross-References

State treasury fund structure, 17-2-102.

80-6-303. Penalty. (1) A person violating or aiding in the violation of parts 1 through 3 or rules adopted under parts 1 through 3 is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (a) may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the general fund.

(b) if the offense is a misdemeanor, a fine of not less than $25 or more than $500 or imprisonment in the county jail not exceeding 1 year, or both.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts of penalties for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(3) This part may not be construed as requiring the department or its representatives to report violations of this part when it is believed that the public interest will be best served by a suitable notice of warning.

History: En. Sec. 8, Ch. 79, L. 1947; Sec. 82-812, R.C.M. 1947; amd. and redes. 3-3110 by Sec. 137, Ch. 218, L. 1974; R.C.M. 1947, 3-3110; amd. Sec. 3, Ch. 491, L. 1993.

80-6-304 through 80-6-310 reserved.

80-6-311. Bee laboratory authorized. The department or a party designated by the department may develop and maintain a laboratory to provide disease and pest analytical services required to carry out the provisions of this part. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee basis pursuant to 80-6-201(3).

History: En. Sec. 9, Ch. 198, L. 1987.

Parts 4 through 10 reserved

Part 11

Alfalfa Leaf-Cutting Bees

80-6-1101. Short title. This part may be cited as the "Alfalfa Leaf-Cutting Bee Management Act".

History: En. Sec. 1, Ch. 331, L. 1981; amd. Sec. 1, Ch. 310, L. 1987.

80-6-1102. Definitions. As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the committee to determine whether they meet required standards.

(3) "Chalkbrood" means a fungal disease that attacks larvae of the alfalfa leaf-cutting bee.

(4) "Committee" means the Montana alfalfa seed committee established in 2-15-3004.

(5) "Department" means the department of agriculture established in 2-15-3001.

(6) "Equipment" means shelters, trays, incubators, cell removers, tumblers, and other apparatus, except nesting materials, used in rearing bees.

(7) "Nest destroyer" means any organism that competes with the bee larvae for nest provisions.

(8) "Nesting materials" means laminates, drilled boards, and other apparatus used in nesting bees.

(9) "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

(10) "Pathogen" means an organism that causes disease in the alfalfa leaf-cutting bee.

(11) "Person" means an individual, association, partnership, or corporation.

(12) "Predator" means any organism or insect that preys on, devours, or destroys bees or nests.

(13) "Wild trap" means to intentionally trap bees on property not owned or leased by the trapper.

History: En. Sec. 2, Ch. 331, L. 1981; amd. Sec. 1, Ch. 97, L. 1983; amd. Sec. 2, Ch. 310, L. 1987; amd. Sec. 2, Ch. 167, L. 1989; amd. Sec. 1, Ch. 57, L. 1995; amd. Sec. 2, Ch. 4, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 4 in definition of committee substituted reference to Montana Alfalfa Seed Committee established in 2-15-3004 for reference to Alfalfa Leaf-Cutting Bee Committee established in 2-15-3005. Amendment effective July 1, 1997.

80-6-1103. Committee responsibilities — adoption of rules. (1) The committee is responsible for the administration of this part.

(2) The committee shall by rule adopt minimum standards for the presence of pathogens and parasites.

(3) The committee may adopt rules establishing minimum standards for the presence of predators and nest destoyers in bees to be certified, imported, quarantined, and possessed or controlled in the state of Montana.

(4) The committee may provide information and services relating to the rearing of alfalfa leaf-cutting bees and alfalfa seed production.

(5) The committee may enter into agreements with other governmental agencies or private associations in carrying out the provisions of this part.

(6) In performing its duties under this part, the committee may:

(a) enter upon any public or private premises to inspect equipment and sample bees;

(b) by rule establish quarantines to regulate the entry of bees, equipment, and nesting material into areas of Montana specified in the quarantines;

(c) quarantine any bees, equipment, or nesting material found to be infected or contaminated at levels exceeding importation or quarantine standards;

(d) order the disinfection, destruction, or removal of any bees, equipment, or nesting material that does not meet importation or quarantine standards.

(7) Upon receiving notification of nesting material or bees that appear to be abandoned, the committee shall contact the owner as soon as possible to correct the problem. If the owner cannot be found, the nesting material or bees must be considered abandoned and the procedures for disposition of abandoned property set out in Title 70, chapter 9, must be followed.

(8) (a) Whenever the committee has reasonable cause to believe a person is in possession of any bees or equipment in violation of this part or rules adopted under it, the committee may order a quarantine of the suspected bees or equipment and may require any person in possession of the bees or equipment to hold them under specified conditions until notified otherwise in writing by the committee.

(b) The committee shall release any quarantine upon finding that the bees and equipment are in compliance with this part.

History: En. Sec. 3, Ch. 331, L. 1981; amd. Sec. 2, Ch. 97, L. 1983; amd. Sec. 3, Ch. 310, L. 1987; amd. Sec. 3, Ch. 167, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-6-1104. Advisory duty of committee. The committee shall advise the department with respect to any contemplated rulemaking. The committee shall meet periodically to review the minimum standards adopted under this part.

History: En. Sec. 5, Ch. 331, L. 1981; amd. Sec. 4, Ch. 310, L. 1987; amd. Sec. 4, Ch. 167, L. 1989.

80-6-1105. Alfalfa leaf-cutting bees — certification. (1) A person possessing or controlling alfalfa leaf-cutting bees in the state of Montana may annually certify all or part of his bees as provided in this section.

(2) To certify bees, a person must file a completed application form provided by the department, together with a fee set by rule. The applicant must provide the following:

(a) name and place of residence;

(b) the general location and number of bees to be certified; and

(c) other relevant information as may be required by committee rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified shall be selected by the committee or its agent in a manner prescribed by the committee. The sample shall be analyzed for pathogens, parasites, predators, nest destroyers, and live larvae count. If certification standards are met, the sample shall be certified.

(4) All bees to be certified may be stored in containers which can be officially sealed after sampling to maintain their certification identity.

(5) When the committee has in its possession a completed application form, an appropriate fee, and a report that the sample meets certification standards, it may issue a certificate for the bees.

(6) The committee shall by rule specify the date by which any applicant must apply for recertification the following year.

History: En. Sec. 6, Ch. 331, L. 1981; amd. Sec. 3, Ch. 97, L. 1983; amd. Sec. 6, Ch. 310, L. 1987; amd. Sec. 5, Ch. 167, L. 1989.

80-6-1106. Bee laboratory authorized. The committee or its agent may develop and maintain a laboratory for the purpose of providing analytical services required to carry out the provisions of this part. The laboratory may be authorized by the committee to provide services to persons possessing any bees or equipment on a fee-for-service basis.

History: En. Sec. 7, Ch. 331, L. 1981; amd. Sec. 1, Ch. 51, L. 1985; amd. Sec. 7, Ch. 310, L. 1987; amd. Sec. 6, Ch. 167, L. 1989.

80-6-1107. Restrictions on importing bees. Bees may not be imported except in loose cells or as adults. Bees may not be imported in a drilled board, soda straw, or other equipment that prevents adequate sampling of the bees.

History: En. Sec. 8, Ch. 331, L. 1981; amd. Sec. 4, Ch. 97, L. 1983; amd. Sec. 8, Ch. 310, L. 1987; amd. Sec. 7, Ch. 167, L. 1989; amd. Sec. 2, Ch. 57, L. 1995.

80-6-1108. Restrictions on rearing, moving, and trapping of bees and movement of equipment. (1) A person may not wild trap within 1 mile of registered bees without the written permission of the registrant.

(2) A person may not move any quarantined bee or equipment except by special permit issued by the committee.

(3) A person may not wild trap or attempt to wild trap bees unless that person has been issued a permit for that activity in accordance with rules adopted by the committee. The committee shall by rule establish the permit fee.

History: En. Sec. 9, Ch. 331, L. 1981; amd. Sec. 5, Ch. 97, L. 1983; amd. Sec. 9, Ch. 310, L. 1987; amd. Sec. 8, Ch. 167, L. 1989; amd. Sec. 3, Ch. 57, L. 1995.

80-6-1109. Fees to be set by rule — self-supporting program — enterprise fund established. (1) Fees authorized to be charged by this part must be set by committee rule. The fees must be designed to reimburse the committee for costs incurred in providing services and carrying out its duties under this part. It is the intent of the legislature that committee activities under this part be self-supporting.

(2) There is an enterprise fund known as the leaf-cutting bee fund for use by the committee. Fees collected under this part must be paid into the leaf-cutting bee fund.

(3) The committee may direct the board of investments to invest money from the fund pursuant to the provisions of the unified investment program.

The income from such investments must be credited to the leaf-cutting bee fund.

History: En. Sec. 10, Ch. 331, L. 1981; amd. Sec. 42, Ch. 281, L. 1983; amd. Sec. 10, Ch. 310, L. 1987; amd. Sec. 9, Ch. 167, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-6-1110. Violation — penalty. A person who imports, possesses, controls, moves, or wild traps or attempts to import, possess, control, move, or wild trap any bee or equipment in violation of this part or who interferes with or attempts to interfere with the efforts of the committee or its agent to perform its duty under this part is guilty of a misdemeanor and upon conviction shall be fined not less than $300 or more than $500 for the first conviction and not less than $300 or more than $1,000 for each subsequent conviction.

History: En. Sec. 11, Ch. 331, L. 1981; amd. Sec. 10, Ch. 167, L. 1989.

80-6-1111. Alfalfa leaf-cutting bees — registration. (1) A person may not possess or control alfalfa leaf-cutting bees in this state unless the bees are registered as provided in this section.

(2) To register bees, a person shall file a completed application form provided by the department, together with the registration fee set by rule. The applicant shall provide the following:

(a) the name and place of residence;

(b) the general location of bees to be registered; and

(c) other relevant information as may be required by committee rule.

(3) A registration is continuous until the registrant notifies the committee of cancellation.

History: En. Sec. 5, Ch. 310, L. 1987; amd. Sec. 11, Ch. 167, L. 1989; amd. Sec. 4, Ch. 57, L. 1995.

80-6-1112. Funding limitation. (1) The committee shall expend only those funds which are raised by fees under this part. In the event that funds are insufficient to finance the costs of services under this part, the committee may reduce services accordingly.

(2) The committee may contract lab services with a qualified person and charge growers at cost on a per-sample basis.

(3) The committee may levy a fee set by committee rule not to exceed 30 cents for each 3,000 holes of nesting material deeper than 3 ½ inches for the purpose of administering this part and for the sampling and testing of bees. For nesting material 3 ½ inches deep or less, the fee may not exceed 16 cents per 2,000 holes of nesting material.

(4) Fees must be based on all nesting materials that are in field use on July 15 of each year. Fees are due on November 1 of each year.

(5) The amount of fees paid must be credited against a grower's cost of sampling and certification.

(6) Certification fees for drilled boards or loose cells may not exceed committee cost.

History: En. Sec. 11, Ch. 310, L. 1987; amd. Sec. 12, Ch. 167, L. 1989.

80-6-1113. Repealed. Sec. 5, Ch. 57, L. 1995.

History: En. Sec. 13, Ch. 167, L. 1989.

80-6-1114. Repealed. Sec. 5, Ch. 57, L. 1995.
History: En. Sec. 14, Ch. 167, L. 1989.

80-6-1115. Repealed. Sec. 5, Ch. 57, L. 1995.
History: En. Sec. 15, Ch. 167, L. 1989.

CHAPTER 7

DISEASE, PEST, AND WEED CONTROL

Part 1 — Control of Diseases and Insects in Nurseries

80-7-101. Repealed.
80-7-102. Repealed.
80-7-103. Repealed.
80-7-104. Renumbered 80-7-107 by Code Commissioner, 1993.
80-7-105. Definitions.
80-7-106. License required — application and payment of license fee.
80-7-107. Grounds for refusal or revocation of license.
80-7-108. Nursery stock inspection — fees.
80-7-109. Duty to notify department of infestation.
80-7-110. Removal of infected nursery stock — assessment of costs.
80-7-111. Repealed.
80-7-112. Repealed.
80-7-113. Repealed.
80-7-114. Renumbered 80-7-110 by Code Commissioner, 1993.
80-7-115 through 80-7-120. Repealed.
80-7-121. Repealed.
80-7-122. Nursery stock certification.
80-7-123. Nursery account — investment of funds.
80-7-124 through 80-7-130 reserved.
80-7-131. Repealed.
80-7-132. Cooperation — agreements with other governmental agencies.
80-7-133. Acts made unlawful — penalty.
80-7-134. Repealed.
80-7-135. Penalty for violation.

Part 2 — Fruit and Vegetable Pest and Disease Control
(Repealed. Sec. 12, Ch. 551, L. 1993.)

Part 3 — Barberry Control
(Repealed. Sec. 12, Ch. 551, L. 1993.)

Part 4 — Quarantine and Pest Management

80-7-401. Short title.
80-7-402. Quarantines and pest management procedures — department rules.
80-7-403. Receipt and deposit of gifts, grants, and other funds.
80-7-404. Penalty.

Part 5 — Crop Insect Detection and Management

80-7-501. Definitions.
80-7-502. Insect detection, surveillance, and control programs.
80-7-503. Duties of department.
80-7-504. Financing of control program.
80-7-505. Computation and collection of assessments on landowners.
80-7-506. Rangeland control programs.

80-7-507. Administrative rules.
80-7-508. Duties of the cooperative extension service.

Part 6 reserved

Part 7 — Weed Control

80-7-701. Regulation of importation or sale of noxious weeds.
80-7-702. Rulemaking authority.
80-7-703. Violations of importation rules — penalty.
80-7-704. Disposition of fines and inspection fees.
80-7-705 through 80-7-710 reserved.
80-7-711. Technical assistance.
80-7-712. Funding of noxious plant management programs.
80-7-713. Reports.
80-7-714. Rules.
80-7-715 through 80-7-719 reserved.
80-7-720. Biological agents for weed control.

Part 8 — Noxious Weed Management Funding

80-7-801. Definitions.
80-7-802. Rules.
80-7-803 and 80-7-804 reserved.
80-7-805. Noxious weed management advisory council.
80-7-806 through 80-7-809 reserved.
80-7-810. Disposition of proceeds.
80-7-811. Noxious weed management trust fund.
80-7-812. Repealed.
80-7-813. Acceptance and expenditure of gifts and other funds.
80-7-814. Administration and expenditure of funds.
80-7-815. Noxious weed emergency — expenditure authorized.
80-7-816. Account — deposit — investment.
80-7-817 through 80-7-820 reserved.
80-7-821. Repealed.

Part 9 — Noxious Weed Seed Free Forage Act

80-7-901. Short title.
80-7-902. Findings — purpose.
80-7-903. Definitions.
80-7-904. Composition of advisory council.
80-7-905. Powers and duties of department.
80-7-906. Certification.
80-7-907. Fees.
80-7-908. Deposit and disbursement of funds — records — investment.
80-7-909. Rules.
80-7-910. Investigation and enforcement authority.
80-7-911. Stop sale, use, or removal order.
80-7-912. Prohibited acts.
80-7-913 through 80-7-920 reserved.
80-7-921. Penalty for nonpayment of fees.
80-7-922. Penalties.
80-7-923. Injunction authorized.
80-7-924. Embargo.

Part 10 reserved

Part 11 — Vertebrate Pest Management

80-7-1101. Department to operate vertebrate pest management program.
80-7-1102. Expenditures authorized.
80-7-1103. Purchase and sale of vertebrate pest management supplies.
80-7-1104. Vertebrate pest management advisory council.

80-7-1105. Rodenticide fund.
80-7-1106. Repealed.
80-7-1107. Acceptance and expenditure of gifts, grants, and funds.
80-7-1108. Rules.

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horizontal organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — crop or grain liens for spraying or dusting, Title 71, ch. 3, part 9.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Part 1

Control of Diseases and Insects in Nurseries

Part Cross-References

Rodent control districts, Title 7, ch. 22, part 22.

County insect control, Title 7, ch. 22, part 23.

Weed control fee — motor vehicle registration, 61-3-510.

80-7-101. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. 3-1201.1 by Sec. 53, Ch. 218, L. 1974; amd. Sec. 1, Ch. 155, L. 1975; R.C.M. 1947, 3-1201.1.

80-7-102. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963; amd. Sec. 63, Ch. 218, L. 1974; amd. Sec. 1, Ch. 151, L. 1975; R.C.M. 1947, 3-1212; amd. Sec. 3, Ch. 300, L. 1979; amd. Sec. 6, Ch. 620, L. 1987; amd. Sec. 1, Ch. 151, L. 1991.

80-7-103. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 2, Ch. 220, L. 1943; amd. Sec. 64, Ch. 218, L. 1974; R.C.M. 1947, 3-1213.

80-7-104. Renumbered 80-7-107 by Code Commissioner, 1993.

80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Nursery" means the business or location where nursery stock is grown or offered for sale, resale, or as part of a landscape service.

(3) "Nursery stock" means botanically classified plants or parts of plants. The following plants and plant materials may not be considered nursery stock:

(a) aquatic plants used for aquarium purposes;
(b) field crop plants and seeds;
(c) pasture grasses;
(d) cut plants not for propagation;
(e) corms, tubers, and bulbs;
(f) fruits or vegetables for human or animal consumption;
(g) cut trees and products for processing; and
(h) plant debris for disposal or processing.

(4) "Nursery stock certification" means the process whereby the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(5) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(6) "Plant pest" means an insect, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(7)(a)(i), or other exotic weeds are defined as plant pests.

History: En. Sec. 1, Ch. 551, L. 1993.

80-7-106. License required — application and payment of license fee. (1) A firm engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each nursery from the department.

(2) The license must be in the name of the firm seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) (a) A nursery that earns less than $1,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect to the department is exempt from licensing.

(b) A nursery that earns $1,000 but less than $3,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect to the department shall pay a license fee of $30.

(c) A nursery that earns $3,000 or more in gross annual sales of nursery stock shall pay a license fee of $95.

(4) A new applicant or a firm failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable application fee of $25 for each license.

(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

(6) If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee.

(7) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

History: En. Sec. 2, Ch. 551, L. 1993; amd. Sec. 1, Ch. 147, L. 1995; amd. Sec. 17, Ch. 366, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 366 in (2), at end of first sentence, substituted "the anniversary date established by the board of review established in 30-16-302" for "December 31 following the date of issue" and at end of second sentence inserted "and in the form determined by rule by the board of review established in 30-16-302"; in (4), after "license", substituted "on or before the annual anniversary date provided for in subsection (2)" for "by January 1 of each year"; inserted (7) regarding payment of fees by credit card and discounting of fees; and made minor changes in style.

80-7-107. Grounds for refusal or revocation of license. The department, in accordance with Title 2, chapter 4, may refuse to issue a license or it may revoke a license under this part when:

(1) the firm has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) a verified complaint is made to the department that a licensee has failed to comply with this part.

History: En. Sec. 3, Ch. 220, L. 1943; amd. Sec. 65, Ch. 218, L. 1974; R.C.M. 1947, 3-1214; amd. Sec. 9, Ch. 551, L. 1993; Sec. 80-7-104, MCA 1991; redes. 80-7-107 by Code Commissioner, 1993.

80-7-108. Nursery stock inspection — fees. (1) The department may enter a firm or nursery premises during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. An inspection fee may not be assessed if the department requests the inspection.

(2) A firm or nursery may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. A firm or nursery requesting an inspection shall pay a fee as established by

department rule. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey.

History: En. Sec. 3, Ch. 551, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-7-109. Duty to notify department of infestation. A firm or nursery with nursery stock or other materials that are infested with plant pests, as defined in 80-7-105, shall notify the department. The firm or nursery shall comply with the instructions of the department for the control of the plant pests.

History: En. Sec. 4, Ch. 551, L. 1993.

80-7-110. Removal of infected nursery stock — assessment of costs. (1) If a firm owning nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy.

(2) If an owner fails to pay the actual cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at the owner's last-known post-office address and to any purchaser of the property under contract for deed at the purchaser's last-known post-office address, the cost becomes a lien on the land of the owner and must be added by the county treasurer to the taxes upon the property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R.C.M. 1921; re-en. Sec. 3617, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1939; amd. Sec. 56, Ch. 218, L. 1974; R.C.M. 1947, 3-1204; amd. Sec. 22, Ch. 526, L. 1983 amd. Sec. 10, Ch. 551, L. 1993; Sec. 80-7-114, MCA 1991; redes. 80-7-110 by Code Commissioner, 1993.

80-7-111. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R.C.M. 1921; re-en. Sec. 3614, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1939; amd. Sec. 1, Ch. 89, L. 1945; amd. Sec. 52, Ch. 218, L. 1974; R.C.M. 1947, 3-1201.

80-7-112. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. 3-1201.2 by Sec. 1, Ch. 150, L. 1975; R.C.M. 1947, 3-1201.2.

80-7-113. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1926, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3616, R.C.M. 1921; re-en. Sec. 3616, R.C.M. 1935; amd. Sec. 55, Ch. 218, L. 1974; R.C.M. 1947, 3-1203.

80-7-114. Renumbered 80-7-110 by Code Commissioner, 1993.

80-7-115 through 80-7-120. Repealed. Sec. 12, Ch. 551, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

80-7-115. En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R.C.M. 1921; re-en. Sec. 3618, R.C.M. 1935; amd. Sec. 57, Ch. 218, L. 1974; R.C.M. 1947, 3-1205.

80-7-116. En. Sec. 48, Ch. 215, L. 1921; re-en. Sec. 3620, R.C.M. 1921; re-en. Sec. 3620, R.C.M. 1935; Sec. 58, Ch. 218, L. 1974; R.C.M. 1947, 3-1206.

80-7-117. En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R.C.M. 1921; re-en. Sec. 3621, R.C.M. 1935; amd. Sec. 59, Ch. 218, L. 1974; R.C.M. 1947, 3-1207.

80-7-118. En. Sec. 1929, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3623, R.C.M. 1921; re-en. Sec. 3623, R.C.M. 1935; amd. Sec. 60, Ch. 218, L. 1974; amd. Sec. 2, Ch. 155, L. 1975; R.C.M. 1947, 3-1209.

80-7-119. En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R.C.M. 1921; re-en. Sec. 3624, R.C.M. 1935; amd. Sec. 61, Ch. 218, L. 1974; R.C.M. 1947, 3-1210.

80-7-120. En. Sec. 5, Ch. 220, L. 1943; amd. Sec. 66, Ch. 218, L. 1974; R.C.M. 1947, 3-1216.

80-7-121. Repealed. Sec. 7, Ch. 7, L. 1997.

History: En. Sec. 6, Ch. 551, L. 1993.

80-7-122. Nursery stock certification. At the request of a firm or nursery, the department may inspect nursery stock for the purpose of nursery stock certification. The department shall establish certification standards, inspection procedures, and fees by department rule.

History: En. Sec. 7, Ch. 551, L. 1993.

80-7-123. Nursery account — investment of funds. (1) There is an account in the state special revenue fund. All inspection and license fee revenue authorized under 80-7-106, 80-7-108, 80-7-122, 80-7-135, and this section must be deposited in this account.

(2) Revenue received under 80-7-106, 80-7-108, 80-7-122, 80-7-135, and this section not immediately required for the purpose of 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-122, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account.

History: En. Sec. 8, Ch. 551, L. 1993; amd. Sec. 5, Ch. 7, L. 1997; amd. Sec. 289, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 7 in (1) and in (2), in two places, deleted reference to 80-7-121.

Chapter 42 in (1) and (2) deleted references to 80-7-105, 80-7-109, and 80-7-121. Amendment effective March 12, 1997.

80-7-124 through 80-7-130 reserved.

80-7-131. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R.C.M. 1921; re-en. Sec. 3615, R.C.M. 1935; amd. Sec. 54, Ch. 218, L. 1974; R.C.M. 1947, 3-1202.

80-7-132. Cooperation — agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this part.

History: En. 3-1219 by Sec. 1, Ch. 149, L. 1975; R.C.M. 1947, 3-1219.

80-7-133. Acts made unlawful — penalty. (1) It is unlawful for a firm to:

(a) fail to properly identify nursery stock offered for sale at retail. Identification must include but is not limited to the common name and variety. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact the nursery stock was grown in or came from another location or nursery;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) willfully or intentionally bring into this state, offer for sale or distribution within this state or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the horticultural interests of the state; or

(f) sell or distribute nursery stock or cut decorative or aquarium plants declared noxious weeds under 7-22-2101(7)(a)(i).

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured, to the extent of all damages sustained, to be recovered in a civil action in any court of competent jurisdiction.

History: En. Sec. 4, Ch. 220, L. 1943; amd. Sec. 15, Ch. 13, L. 1977; R.C.M. 1947, 3-1215; amd. Sec. 11, Ch. 551, L. 1993.

80-7-134. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R.C.M. 1921; re-en. Sec. 3625, R.C.M. 1935; Sec. 3-1211, R.C.M. 1947; amd. and redes. 3-1218 by Sec. 62, Ch. 218, L. 1974; R.C.M. 1947, 3-1218.

80-7-135. Penalty for violation. (1) A firm or nursery that purposely, knowingly, or negligently violates or aids in the violation of a provision of this chapter or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this chapter commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-122, 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this chapter when the department believes that the public interest will be best served by a suitable notice of warning.

History: En. Sec. 5, Ch. 551, L. 1993; amd. Sec. 6, Ch. 7, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 7 in (4) deleted reference to 80-7-121.

Part 2

Fruit and Vegetable Pest and Disease Control (Repealed. Sec. 12, Ch. 551, L. 1993.)

Part Compiler's Comments

Histories of Repealed Sections:

80-7-201. En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R.C.M. 1921; re-en. Sec. 3610, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1963; amd. Sec. 49, Ch. 218, L. 1974; R.C.M. 1947, 3-1103.

80-7-202. En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R.C.M. 1921; re-en. Sec. 3611, R.C.M. 1935; amd. Sec. 50, Ch. 218, L. 1974; R.C.M. 1947, 3-1104.

80-7-203. En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R.C.M. 1921; re-en. Sec. 3613, R.C.M. 1935; amd. Sec. 51, Ch. 218, L. 1974; R.C.M. 1947, 3-1106.

80-7-204. En. Sec. 1935, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; amd. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R.C.M. 1921; re-en. Sec. 3626, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1939; amd. Sec. 67, Ch. 218, L. 1974; R.C.M. 1947, 3-1301.

80-7-205. En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R.C.M. 1921; re-en. Sec. 3627, R.C.M. 1935; amd. Sec. 68, Ch. 218, L. 1974; R.C.M. 1947, 3-1302.

80-7-206. (1) thru (3)En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R.C.M. 1921; re-en. Sec. 3628, R.C.M. 1935; amd. Sec. 69, Ch. 218, L. 1974; Sec. 3-1303, R.C.M. 1947; (4)En. Sec. 54, Ch. 216, L. 1921; re-en. Sec. 3629, R.C.M. 1921; re-en. Sec. 3629, R.C.M. 1935; Sec. 3-1304, R.C.M. 1947; R.C.M. 1947, 3-1303, 3-1304; amd. Sec. 23, Ch. 526, L. 1983.

80-7-207. En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R.C.M. 1921; re-en. Sec. 3631, R.C.M. 1935; amd. Sec. 71, Ch. 218, L. 1974; R.C.M. 1947, 3-1306.

80-7-208. En. Sec. 2, Ch. 61, L. 1913; amd. Sec. 1, Ch. 89, L. 1921; re-en. Sec. 3632, R.C.M. 1921; re-en. Sec. 3632, R.C.M. 1935; R.C.M. 1947, 3-1307.

80-7-209. En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R.C.M. 1921; re-en. Sec. 3633, R.C.M. 1935; amd. Sec. 72, Ch. 218, L. 1974; R.C.M. 1947, 3-1308.

80-7-210. En. 3-1309 by Sec. 73, Ch. 218, L. 1974; R.C.M. 1947, 3-1309; amd. Sec. 188, Ch. 575, L. 1981.

Part 3

Barberry Control (Repealed. Sec. 12, Ch. 551, L. 1993.)

Part Compiler's Comments

Histories of Repealed Sections:

80-7-301. (1)En. Sec. 3, Ch. 40, L. 1919; re-en. Sec. 3605, R.C.M. 1921; re-en. Sec. 3605, R.C.M. 1935; Sec. 3-1003, R.C.M. 1947; (2)En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R.C.M. 1921; re-en. Sec. 3606, R.C.M. 1935; amd. Sec. 48, Ch. 218, L. 1974; Sec. 3-1004, R.C.M. 1947; R.C.M. 1947, 3-1003, 3-1004.

80-7-302. En. Sec. 1, Ch. 40, L. 1919; re-en. Sec. 3603, R.C.M. 1921; re-en. Sec. 3603, R.C.M. 1935; R.C.M. 1947, 3-1001.

80-7-303. En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R.C.M. 1921; re-en. Sec. 3604, R.C.M. 1935; amd. Sec. 47, Ch. 218, L. 1974; R.C.M. 1947, 3-1002.

80-7-304. En. Sec. 5, Ch. 40, L. 1919; re-en. Sec. 3607, R.C.M. 1921; re-en. Sec. 3607, R.C.M. 1935; R.C.M. 1947, 3-1005.

Part 4

Quarantine and Pest Management

80-7-401. Short title. This part may be cited as the "Montana Quarantine and Pest Management Act".

History: En. Sec. 1, Ch. 7, L. 1997.

80-7-402. Quarantines and pest management procedures — department rules. The department may adopt rules concerning:

(1) intrastate and interstate quarantines;

(2) procedures to investigate and enforce quarantines to prevent the introduction or spread of plant pests, plants capable of spreading plant pests,

plants defined as noxious weeds in 7-22-2101, and other exotic plants defined by department rule as plant pests;

(3) pest management standards and procedures for surveying and controlling plant pests;

(4) procedures for the introduction of plant pests and biological control agents into the state; and

(5) procedures for the recovery of expenses and imposition of penalties.

History: **En. Sec. 2, Ch. 7, L. 1997.**

80-7-403. Receipt and deposit of gifts, grants, and other funds. (1) To fund the provisions of 80-7-402, the department may receive funds from any source as gifts, grants, contracts, cost-share funds, and other funds, including civil penalties and recovered expenses.

(2) Except for funds received in the form of civil penalties, funds received pursuant to this section must be deposited in the produce account established in 80-3-304. Funds received in the form of civil penalties must be deposited in the general fund.

History: **En. Sec. 3, Ch. 7, L. 1997.**

80-7-404. Penalty. (1) A person who violates the quarantines, procedures, or rules of the department adopted under 80-7-402 commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this part. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the enforcement of civil penalties.

(4) This section may not be construed as requiring the department or its agents to report violations of 80-7-402 when the department believes that the public interest will be best served by a suitable notice of warning.

History: **En. Sec. 4, Ch. 7, L. 1997.**

Part 5

Crop Insect Detection and Management

Part Cross-References

County insect control, Title 7, ch. 22, part 23.

80-7-501. Definitions. As used in this part, the following definitions apply:

(1) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals.

(2) "Cropland" means land used for the production of food and forage, including the headlands, ditches, and rights-of-way adjacent to such land.

(3) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of preventing or destroying insect pests.

(4) "Emergency" means a serious insect pest infestation that meets the conditions of 10-3-311.

(5) "Infestation" means that a pest exists in such numbers, under certain conditions, and at certain times as to destroy or substantially damage or threaten to destroy livestock or other agricultural crops.

(6) "Insect pest" includes the grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticulture crops.

History: En. 3-3501 by Sec. 1, Ch. 433, L. 1975; amd. Sec. 27, Ch. 13, L. 1977; amd. Sec. 1, Ch. 362, L. 1977; R.C.M. 1947, 3-3501(1) thru (4), (6), (7).

80-7-502. Insect detection, surveillance, and control programs. The department may:

(1) employ permanent and seasonal personnel to administer this part;

(2) survey for and maintain surveillance of insect pests during appropriate seasons and enter upon any croplands in the course of conducting such surveillance;

(3) provide insect pest management services to particular agricultural commodity groups for the resolution of special or unusual insect pest problems;

(4) determine or assist a county to determine, upon investigation, whether a serious infestation exists or threatens to occur within a county;

(5) declare that an insect pest infestation constitutes a serious infestation;

(6) operate, contract for, or assist a county to obtain spraying or other appropriate services to counteract an actual or threatening serious infestation, having first determined that any person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(7) conduct, cooperate in, or coordinate upon request by any affected county, insect pest management services for serious pest infestations in one or more counties;

(8) assist counties, upon request, to coordinate county insect pest management programs in contiguous counties.

History: En. 3-3502 by Sec. 2, Ch. 433, L. 1975; amd. Sec. 2, Ch. 362, L. 1977; R.C.M. 1947, 3-3502.

80-7-503. Duties of department. The department may:

(1) develop and publish a list of pesticides approved for control of insect pests;

(2) develop and publish technical guidelines on techniques of controlling insect pests;

(3) notify a county of its survey results and state whether the infestation is normal or serious;

(4) review and comment on or review and approve all county agricultural insect pest management plans as provided by local government statutes and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner;

(5) consider whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and provide the county with a summary of its findings prior to conducting or approving any cropland spraying program. If the alternative control program is considered adequate, the department may conduct or approve such a program.

History: En. 3-3503 by Sec. 3, Ch. 433, L. 1975; amd. Sec. 3, Ch. 362, L. 1977; R.C.M. 1947, 3-3503; amd. Sec. 1, Ch. 53, L. 1989.

Cross-References

Department defined, 80-1-101.

80-7-504. Financing of control program. (1) One-third of the costs of a cropland spraying program or alternative program conducted by the state shall be paid by the state. Prior to the implementation of any state or county control program, the department and the governing body of any county for which the program is proposed shall enter into an interlocal or management agreement on the maximum amount of moneys each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) Individual farm and ranch landowners may formally petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or local governing body shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under 80-7-505. The governing body of any county for which a control program is intended shall proceed as provided by local government statutes.

(3) If the department conducts the program, it shall pay all costs of the program. The county shall pay its share and the landowner's share as provided in 80-7-505 to the department for deposit in the appropriate fund.

(4) If the county conducts the program, it shall pay all costs of the program including its share. The department shall pay one-third of the costs of the cropland spraying program from moneys appropriated for that purpose to the county in which the program was conducted. The county treasurer shall collect the landowner's special assessment as provided in 80-7-505.

History: En. 3-3504 by Sec. 4, Ch. 433, L. 1975; amd. Sec. 4, Ch. 362, L. 1977; R.C.M. 1947, 3-3504.

80-7-505. Computation and collection of assessments on landowners. Each owner of cropland benefited under a cropland spraying program is liable for such portion of the landowner's share of the program costs as his cropland is a portion of all cropland within the boundaries of the program. The county treasurer shall compute each landowner's liability and mail a special assessment therefor to each owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed.

History: En. 3-3505 by Sec. 5, Ch. 433, L. 1975; amd. Sec. 5, Ch. 362, L. 1977; R.C.M. 1947, 3-3505.

80-7-506. Rangeland control programs. The department may enter into agreements with the United States department of agriculture for cooperative programs to control insect pest infestations on rangeland and to share the costs of such programs whenever funds have been appropriated and are available for that purpose.

History: En. 3-3506 by Sec. 6, Ch. 433, L. 1975; amd. Sec. 6, Ch. 362, L. 1977; R.C.M. 1947, 3-3506.

80-7-507. Administrative rules. The department may adopt rules necessary to carry out the intent of this part.

History: En. 3-3507 by Sec. 7, Ch. 362, L. 1977; R.C.M. 1947, 3-3507.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-7-508. Duties of the cooperative extension service. (1) The cooperative extension service within the department of education shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and make public the best remedies to be employed.

(2) The cooperative extension service shall cooperate with the agricultural experiment station in providing annual reports required under 80-7-814(4).

History: En. Sec. 2, Ch. 75, L. 1967; Sec. 82-804.2, R.C.M. 1947; amd. and redes. 75-8806 by Sec. 127, Ch. 218, L. 1974; R.C.M. 1947, 75-8806; amd. Sec. 2, Ch. 440, L. 1991.

Cross-References

Cooperative agricultural extension work — assents of state to acts of Congress, 20-25-226.

Part 6 reserved

Part 7
Weed Control

Part Cross-References

County weed control, 7-14-2132; Title 7, ch. 22, part 21.

Herbicide liability restrictions, 7-22-2111.

Information on herbicide use, 7-22-2112.

80-7-701. Regulation of importation or sale of noxious weeds. (1) As used in this section:

(a) "native plant" means a plant endemic to the state of Montana; and

(b) "native plant community" means an assemblage of native plants occurring in a natural habitat.

(2) The department may regulate or prohibit the importation or sale of grain, plants, seed, tubers, nursery stock, fruit, or other materials containing noxious weed seed or plants harmful to Montana's horticultural, agricultural, forestry, livestock, wildlife, or native plant communities.

History: En. Sec. 4, Ch. 195, L. 1939; amd. Sec. 1, Ch. 44, L. 1965; amd. Sec. 117, Ch. 218, L. 1974; R.C.M. 1947, 16-1708; amd. Sec. 2, Ch. 303, L. 1991.

80-7-702. Rulemaking authority. The department of agriculture shall adopt all necessary rules for the regulation of the importation or sale of materials as provided in 80-7-701. The department in adopting the rules may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, the regulation of nursery stock commerce, and other rules and procedures necessary to carry out 80-7-701 through 80-7-704.

History: En. Sec. 2, Ch. 44, L. 1965; amd. Sec. 118, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.1; amd. Sec. 3, Ch. 303, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, Ch. 4, part 3.

Analysis by seed laboratory — reports, 80-5-108.

Agricultural seed rules, 80-5-206.

80-7-703. Violations of importation rules — penalty. Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of 80-7-701 through 80-7-704 shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 and not more than $500.

History: En. Sec. 3, Ch. 44, L. 1965; R.C.M. 1947, 16-1708.2.

80-7-704. Disposition of fines and inspection fees. All fines levied as provided in 80-7-703, except fines paid to a justice's court, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the state special revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704.

History: En. Sec. 4, Ch. 44, L. 1965; amd. Sec. 119, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.3; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 51, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

State treasury fund structure, 17-2-102.

80-7-705 through 80-7-710 reserved.

80-7-711. Technical assistance. The department is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include:

(1) development, compilation, and reporting of information and records on noxious plant infestations in every county;

(2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state;

(3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens;

(4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs;

(5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations;

(6) information on the restrictions and proper use of pesticides and other management techniques;

(7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and

(8) cooperation and coordination of activities with any government agency, private industry, or citizen.

History: En. 16-1724 by Sec. 1, Ch. 466, L. 1977; R.C.M. 1947, 16-1724.

80-7-712. Funding of noxious plant management programs. (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines, and policies of the department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds.

(2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants.

(3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state.

(4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation.

History: En. 16-1725 by Sec. 2, Ch. 466, L. 1977; R.C.M. 1947, 16-1725.

80-7-713. Reports. The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor, to the legislature as provided in 5-11-210, and to other such groups and organizations as the department considers necessary.

History: En. 16-1726 by Sec. 3, Ch. 466, L. 1977; R.C.M. 1947, 16-1726; amd. Sec. 54, Ch. 112, L. 1991.

80-7-714. Rules. The department may adopt rules and policies necessary to implement 80-7-711 through 80-7-713 pursuant to the Montana Administrative Procedure Act.

History: En. 16-1727 by Sec. 4, Ch. 466, L. 1977; R.C.M. 1947, 16-1727.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-7-715 through 80-7-719 reserved.

80-7-720. Biological agents for weed control. (1) The department of agriculture is authorized to expend funds for the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical application.

(2) The department of natural resources and conservation is authorized to administratively transfer funds to the department of agriculture for the project described in subsection (1).

History: En. Sec. 8, HB 621, L. 1987.

Part 8
Noxious Weed Management Funding

Part Cross-References

County weed control, Title 7, ch. 22, part 21.

80-7-801. Definitions. As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(3)(g) may be given.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Noxious weed" means any weed defined in 7-22-2101(7)(a).

History: En. Sec. 1, Ch. 577, L. 1985; amd. Sec. 1, Ch. 15, L. 1987; amd. Sec. 1, Ch. 220, L. 1995.

80-7-802. Rules. The department may adopt rules necessary to implement this part.

History: En. Sec. 8, Ch. 577, L. 1985.

80-7-803 and 80-7-804 reserved.

80-7-805. Noxious weed management advisory council. (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the administration of this part.

(2) If appointed, the council must be composed of nine members, as follows:

(a) the director of the department of agriculture, who shall serve as chairman;

(b) one member representing livestock production;

(c) one member representing agriculture crop production;

(d) one member from a sportsman/wildlife group;

(e) one member who is a herbicide dealer or applicator;

(f) one member from a consumer group;

(g) one member representing biological research and control interests;

(h) one member from the Montana weed control association; and

(i) one at-large member from the agricultural community.

History: En. Sec. 9, Ch. 577, L. 1985.

80-7-806 through 80-7-809 reserved.

80-7-810. Disposition of proceeds. Three percent of the proceeds from the fee imposed in 61-3-510 may be retained by the county treasurer for costs of collection. The remainder must be deposited in the special revenue fund and must be expended as provided in 80-7-814. Twenty-five percent of the money deposited in the special revenue fund under this section must be used for research and development of nonchemical methods of weed management.

History: En. Sec. 2, Ch. 639, L. 1987; amd. Sec. 7, Ch. 588, L. 1991.

Cross-References

Weed control fee — motor vehicle registration, 61-3-510.

80-7-811. Noxious weed management trust fund. There is a noxious weed management trust fund of $2.5 million. The department shall administer the trust fund in accordance with this part.

History: En. Sec. 2, Ch. 577, L. 1985; amd. Sec. 2, Ch. 220, L. 1995.

Cross-References

Fee in lieu of tax on off-highway vehicles — exception — disposition of fees, 23-2-803.

80-7-812. Repealed. Sec. 10, Ch. 220, L. 1995.

History: En. Sec. 3, Ch. 577, L. 1985; amd. Sec. 2, Ch. 15, L. 1987; amd. Sec. 6, Ch. 588, L. 1991.

80-7-813. Acceptance and expenditure of gifts and other funds. The department may accept gifts, grants, contracts, or other funds designated for noxious weed management. The funds must be deposited in the noxious weed management trust fund or in the account established in 80-7-816 and may be expended to support a noxious weed management project.

History: En. Sec. 4, Ch. 577, L. 1985; amd. Sec. 3, Ch. 220, L. 1995.

80-7-814. Administration and expenditure of funds. (1) Money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least $2.5 million.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed control districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.

History: En. Sec. 5, Ch. 577, L. 1985; amd. Sec. 3, Ch. 639, L. 1987; amd. Sec. 76, Ch. 83, L. 1989; amd. Sec. 1, Ch. 440, L. 1991; amd. Sec. 4, Ch. 220, L. 1995.

Cross-References

Weed control fee — motor vehicle registration, 61-3-510.

80-7-815. Noxious weed emergency — expenditure authorized. (1) If a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, this declaration authorizes the department to allocate up to $150,000 of the principal of the noxious weed management trust fund to government agencies for emergency relief to eradicate or confine the new noxious weed species.

(2) If the expenditure causes the principal of the trust fund to fall below $2.5 million, it must be replenished by the interest or revenue generated by the trust fund, by the other revenue provided by this part, or by revenue obtained from the fee imposed by 61-3-510, as determined by the department.

History: En. Sec. 6, Ch. 577, L. 1985; amd. Sec. 8, Ch. 588, L. 1991; amd. Sec. 5, Ch. 220, L. 1995.

80-7-816. Account — deposit — investment. (1) There is an account in the state special revenue fund established in 17-2-102. The interest from the noxious weed trust fund and the fee imposed in 61-3-510 must be deposited in the account and must be expended as provided in 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.

History: En. Sec. 6, Ch. 220, L. 1995.

Cross-References

State treasury fund structure, 17-2-102.

Weed control fee — motor vehicle registration, 61-3-510.

80-7-817 through 80-7-820 reserved.

80-7-821. Repealed. Sec. 10, Ch. 220, L. 1995.

History: En. Sec. 7, Ch. 577, L. 1985.

Part 9
Noxious Weed Seed Free Forage Act

Part Cross-References

Control of weeds along roads and highways, 7-14-2132.

County weed control, Title 7, ch. 22, part 21.

Embargo, 7-22-2126.

80-7-901. Short title. This part may be cited as the "Noxious Weed Seed Free Forage Act".

History: En. Sec. 1, Ch. 521, L. 1995.

80-7-902. Findings — purpose. (1) The legislature finds that:

(a) natural resources of the state need to be protected from noxious weeds and their seeds;

(b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds, causes new and expanding noxious weed infestations on private and government-managed lands, which adversely impact agricultural, forest, recreational, and other lands;

(c) it is necessary to develop and implement a state forage and product noxious weed seed free program in cooperation with federal, state, and local government, the university system, and private enterprise;

(d) an educational program is needed to inform all citizens of the importance of the incentive to market and handle forage that is free of noxious weed seeds;

(e) a cooperative forage and product distribution system with federal, state, local, and private land manager participation is needed to prevent increased noxious weed infestations; and

(f) compliance standards involving the import or export of forage, in cooperation with county weed districts and the department, are needed.

(2) The purpose of this part is to promote incentives to benefit the people of this state and other states by producing and making available forage free of noxious weed seeds.

History: En. Sec. 2, Ch. 521, L. 1995.

80-7-903. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except as provided in 80-7-904, the council is subject to the provisions of 2-15-122.

(2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in 7-22-2101(7)(a)(i), which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.

(4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

(5) "Person" means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free.

(7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free.

History: En. Sec. 3, Ch. 521, L. 1995.

80-7-904. Composition of advisory council. (1) The director of the department shall appoint an advisory council to provide advice to the department concerning the administration of this part.

(2) The advisory council must be composed of 10 voting members and 2 ex officio, nonvoting members, as follows:

(a) the director of the department or a designee, who shall serve as presiding officer;

(b) four members who are producers of forage under a certified forage noxious weed seed free program and who represent different geographical areas of the state;

(c) one member involved in the processing of forage into pellets, cubes, or related products;

(d) one member representing the livestock or agricultural industry;

(e) two members representing county weed districts involved in a forage certification program, who must be members of the Montana weed control association and who represent different geographical areas of the state;

(f) one member representing an outfitter's or guide's organization;

(g) the director of the Montana state university-Bozeman extension service or a designated representative, who is an ex officio, nonvoting member; and

(h) the director of the Montana state university-Bozeman agricultural experiment station or a designated representative, who is an ex officio, nonvoting member.

(3) The members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

History: En. Sec. 4, Ch. 521, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

80-7-905. Powers and duties of department. The department may:

(1) provide for administration and enforcement of this part;

(2) enter into contracts and agreements;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations that are required for administering the provisions of this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct publicity and promotional campaigns to increase the incentives to use Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and other agreements as necessary;

(6) establish certification standards and processes for forage and byproducts of forage and determine if processed forage byproducts are noxious weed seed free, based upon field of origin or verification that the production process has destroyed the viability of noxious weed seeds;

(7) establish fee assessments and accept other funds to make the certification program financially self-supporting;

(8) establish a standard range of variances or tolerances for noxious weed seeds in different forage subject to certification as noxious weed seed free, based upon scientific and operational considerations;

(9) administer rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with Title 2, chapter 4;

(10) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, and enter into contracts or agreements with organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, reciprocity, and enforcement of this part;

(11) hire employees and designate authorized agents to conduct certification inspections, investigations, and sampling and to collect evidence of possible violations of this part; and

(12) accept grants, donations, and gifts from any source and expend those funds for any purpose consistent with this part, which may be specified as a condition of any grant, donation, or gift.

History: En. Sec. 5, Ch. 521, L. 1995.

80-7-906. Certification. (1) A person shall make an annual application to the department for certifying forage. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and identification markers for the forage. If a production tonnage fee is established, the department may establish the method and time of payment.

(2) A person who wishes to deliver forage as noxious weed seed free into this state from out of state shall notify the department and pay any application fee or other appropriate fee, including an inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed free from the state or province of origin if the department approves the certification through a reciprocal agreement or other process approved by the department. The department may waive some certification documentation or fees based upon the provisions in a reciprocal agreement.

History: En. Sec. 6, Ch. 521, L. 1995.

80-7-907. Fees. (1) The department, with the advice of the advisory council, may establish fees to support the cost of administering the noxious weed seed free forage program. Fees may be established for:

(a) processing applications;
(b) per acre inspection of forage;
(c) inspection of facilities;
(d) minimum administration;
(e) inspection related to processing or manufacturing forage into pellets, cubes, and related products;
(f) certification identification markers;
(g) mileage and per diem; and
(h) import inspection.

(2) Fees, structures, and procedures must be recommended to the department by the advisory council.

History: En. Sec. 7, Ch. 521, L. 1995.

80-7-908. Deposit and disbursement of funds — records — investment. (1) There is a state noxious weed forage account in the state special revenue account. All funds received by the department from fees or penalties collected or received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) and all other related funds received must be deposited in the state noxious weed forage account.

(2) The department may by contract allow for the collection of fees authorized under 80-7-907. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require:

(a) a record of the name of the person collecting fees;
(b) a record of fees collected;
(c) a record of the amounts submitted to the department;
(d) a record of the amount retained by the collector; and
(e) that all records be kept in accordance with generally accepted accounting principles.

(3) Funds received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) that are not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department.

(4) Funds received pursuant to this part are appropriated to the department for the administration of the noxious weed seed free forage program and for the purposes of this part.

History: En. Sec. 8, Ch. 521, L. 1995.

80-7-909. Rules. The department may, with the advice of the advisory council appointed under 80-7-904, adopt rules necessary to carry out its responsibilities under this part in accordance with Title 2, chapter 4. The rules may include but are not limited to:

(1) contracts and agreements;
(2) certification standards, processing, and sampling and equipment standards and operation;

(3) inspections and investigation procedures and standards;
(4) operations;
(5) records;
(6) application, inspection, production, import, certification identification, mileage, and per diem fees and their collection;
(7) reciprocal agreements with other states or Canadian provinces; and
(8) penalties, stop sales, condemnation, and other orders.

History: En. Sec. 9, Ch. 521, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-7-910. Investigation and enforcement authority. (1) In enforcing the provisions of this part, the department or its authorized agents, upon reasonable cause, may enter any private or public premises, property, or vehicle with a warrant or with the consent of the inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or sale as certified forage or as free of noxious weed seeds.

(2) All enforcement actions and orders must be made under the contested case provisions of Title 2, chapter 4, part 6.

History: En. Sec. 10, Ch. 521, L. 1995.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.

80-7-911. Stop sale, use, or removal order. When the department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in violation of any of the provisions of this part, a written stop sale, use, or removal order may be issued to that person. If the person is not available for service of the order, the department may attach the order to the forage and notify the person. The forage may not be sold, used, or removed until compliance with the provisions of this part is achieved. The department may release the order once compliance is achieved. The department may require that the forage be sold or used only as an uncertified forage or delivered back to the seller, or the department may order condemnation of any forage that does not meet the requirement of this part or other alternatives established by rule. The department, upon finding that the person responsible for the embargoed forage has failed to comply with the order in any respect, may petition the district court of the first judicial district for enforcement of the order.

History: En. Sec. 11, Ch. 521, L. 1995.

80-7-912. Prohibited acts. (1) It is unlawful for a person to certify or sell as certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless the forage is identified under a department-approved process as "Montana certified" and the forage meets all the requirements of this part. A person may not designate forage as certified or use any other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the forage is certified unless the forage meets all the requirements of this part.

(2) Forage certified under a reciprocal agreement between the department and another state or Canadian province and identified according to approved certification standards to be shipped into the state or shipped to another state or province must meet the requirements of this part.

(3) All forage products used by public utilities and local, county, state, or federal agencies, including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state, or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter 5.

History: En. Sec. 12, Ch. 521, L. 1995.

80-7-913 through 80-7-920 reserved.

80-7-921. Penalty for nonpayment of fees. In addition to the penalties set out in 80-7-922, a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is subject to a penalty of $100 or double the assessment, whichever is greater, including the original fee. The penalty must be paid to the department and deposited as provided in 80-7-908. A certification issued to a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is invalid until the original fee and penalty are paid to the department.

History: En. Sec. 13, Ch. 521, L. 1995.

80-7-922. Penalties. A person who violates or aids in a violation of any of the provisions of this part or any rules or orders of the department adopted under this part is subject to the following penalties:

(1) a civil penalty of not more than $1,000 for each offense. Assessment of a civil penalty by the department may be made in conjunction with any other warning, order, or administrative action authorized by this part that is issued by the department.

(2) a misdemeanor penalty of not less than $100 or more than $1,500 or up to 6 months' imprisonment, or both, if the person is convicted in district court.

History: En. Sec. 14, Ch. 521, L. 1995.

80-7-923. Injunction authorized. The department may commence a civil action in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary injunction, for a violation of this part.

History: En. Sec. 15, Ch. 521, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

80-7-924. Embargo. Upon receiving a report from a district weed board, as provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of this part, the department shall enforce the embargo throughout the state and issue appropriate stop sale orders as provided in 80-7-911.

History: En. Sec. 16, Ch. 521, L. 1995.

Part 10 reserved

Part 11
Vertebrate Pest Management

80-7-1101. Department to operate vertebrate pest management program. The department may establish and operate organized and systematic programs for the management and suppression of vertebrate pests. Vertebrate pests are defined as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when they are injurious to agriculture, other industries, and the public. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the management and suppression of these vertebrate pests, the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the management and suppression of vertebrate pests. Management is the correct identification of a vertebrate pest; recognition of its biology and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress these damages, nuisances, or injuries; and evaluating the effects of these control methods.

History: En. Sec. 1, Ch. 136, L. 1949; amd. Sec. 44, Ch. 310, L. 1974; amd. Sec. 1, Ch. 242, L. 1975; R.C.M. 1947, 3-2701; amd. Sec. 2, Ch. 65, L. 1983; MCA 1981, 81-1-401; redes. 80-7-1101 by Sec. 4, Ch. 65, L. 1983.

Cross-References

Rodent control districts, Title 7, ch. 22, part 22.

County vertebrate pest management, Title 7, ch. 22, part 25.

80-7-1102. Expenditures authorized. The department may make expenditures to:

(1) purchase equipment, materials, supplies, and personal services which are necessary to execute the functions imposed on it by this part;

(2) obtain data on vertebrate pesticide registration and research information on alternative vertebrate pest management techniques;

(3) conduct research or evaluation studies;

(4) make grants to or enter contracts with individuals, universities, other states, state or federal agencies, or other entities it considers appropriate to conduct vertebrate pest management projects;

(5) maintain and support registration of current rodenticides such as compound 1080, strychnine, and zinc phosphide;

(6) seek registration of alternative rodenticides;

(7) develop and implement new vertebrate pest management methods and crop damage assessment techniques;

(8) support vertebrate pest management research and evaluation projects;

(9) educate the agricultural community regarding vertebrate pest management problems and needs;

(10) educate the general public regarding vertebrate pest concerns and the need for vertebrate pest management; and

(11) perform any other related activities.

History: En. Sec. 2, Ch. 136, L. 1949; amd. Sec. 45, Ch. 310, L. 1974; R.C.M. 1947, 3-2702; MCA 1981, 81-1-402; redes. 80-7-1102 by Sec. 4, Ch. 65, L. 1983; amd. Sec. 1, Ch. 144, L. 1987.

80-7-1103. Purchase and sale of vertebrate pest management supplies. In addition to the expenditures authorized in 80-7-1102, the department may purchase vertebrate pest management supplies, including baits, for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the management of vertebrate pests and to make these supplies and baits available to the cooperators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949; amd. Sec. 105, Ch. 147, L. 1963; amd. Sec. 46, Ch. 310, L. 1974; R.C.M. 1947, 3-2704; amd. Sec. 3, Ch. 65, L. 1983; MCA 1981, 81-1-403; redes. 80-7-1103 by Sec. 4, Ch. 65, L. 1983.

80-7-1104. Vertebrate pest management advisory council. (1) The director of agriculture may appoint a vertebrate pest management advisory council to provide advice to the department concerning the administration of this part.

(2) If appointed, the council must be composed of eight members as follows:

(a) the director of agriculture, who shall serve as chairman;

(b) one member representing agricultural interests from Montana west of the continental divide;

(c) one member representing agricultural interests from eastern Montana;

(d) one member representing agricultural interests from north central Montana;

(e) one member representing agricultural interests from south central Montana;

(f) one member from a sportsmen's or wildlife group;

(g) one member from the rodenticide industry; and

(h) one member representing public land interests.

(3) Technical advisers in vertebrate pest control from the department, the extension service, the university system, or the industry may serve as ex officio members at the request of the director of agriculture.

History: En. Sec. 2, Ch. 144, L. 1987.

80-7-1105. Rodenticide fund. There is a rodenticide fund. The fund consists of money collected under 80-7-1107, which must be deposited in the state special revenue fund and must be spent for the purposes set forth in this part.

History: En. Sec. 3, Ch. 144, L. 1987; amd. Sec. 1, Ch. 280, L. 1993.

80-7-1106. Repealed. Sec. 2, Ch. 280, L. 1993.

History: En. Sec. 4, Ch. 144, L. 1987.

80-7-1107. Acceptance and expenditure of gifts, grants, and funds. The department may accept gifts, grants, cost-share funds, or other funds designated for vertebrate pest management purposes. Such funds must be expended to support vertebrate pest management projects as specified in 80-7-1102.

History: **En. Sec. 5, Ch. 144, L. 1987.**

80-7-1108. Rules. The department may adopt rules necessary to implement this part.

History: **En. Sec. 6, Ch. 144, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 8

PESTICIDES

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Chapter Cross-References

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Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — crop or grain liens for spraying or dusting, Title 71, ch. 3, part 9.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

Part 1

General Administration

80-8-101. Short title. This chapter may be cited as the "Montana Pesticides Act".

History: **En. Sec. 1, Ch. 403, L. 1971; R.C.M. 1947, 27-213.**

80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests. The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) applies if the preparation is highly toxic to man, determined as provided in 80-8-105; and if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health and human services; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant that grows where not wanted.

History: En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973; amd. Sec. 120, Ch. 218, L. 1974; amd. Sec. 1, Ch. 462, L. 1977; R.C.M. 1947, 27-216; amd. Sec. 1, Ch. 51, L. 1991; amd. Sec. 78, Ch. 10, L. 1993.

80-8-103. Purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vectorborne diseases. However, the protection of man and his essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous—is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971; R.C.M. 1947, 27-214.

80-8-104. Administration. This chapter shall be administered by the department.

History: En. Sec. 3, Ch. 403, L. 1971; R.C.M. 1947, 27-215.

80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which must be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306;

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 must be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department must be made in writing and must be available at the department for public inspection. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department must include and be based upon written findings of fact. A copy of any rule or order certified by the department must be received in evidence in all courts of this state with the same effect as the original. *(Subsections (2)(r) and (2)(s) terminate June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: En. Sec. 22, Ch. 403, L. 1971; amd. Sec. 123, Ch. 218, L. 1974; amd. Sec. 12, Ch. 462, L. 1977; R.C.M. 1947, 27-234; amd. Sec. 1, Ch. 633, L. 1983; amd. Sec. 27, Ch. 668, L. 1989; amd. Sec. 1, Ch. 465, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Pesticide registration, 80-8-201.

Prohibited acts relating to pesticides, 80-8-202.

Applicator's and operator's examination, 80-8-206.

Dealer's examination, 80-8-208.

Farm applicators, 80-8-209.

Retail sale of pesticides — education program, 80-8-212.

Sampling and analysis, 80-8-302.

80-8-106. Administrative procedures. The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

History: En. Sec. 23, Ch. 403, L. 1971; amd. Sec. 124, Ch. 218, L. 1974; amd. Sec. 13, Ch. 462, L. 1977; R.C.M. 1947, 27-235.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-8-107. Notice — public information. (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:

(i) a building that is used for educational, office, or institutional purposes; or

(ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

(a) be permanently displayed if the pesticide is applied on a regular basis;

(b) be posted at the time of the application if the pesticide is not applied on a regular basis;

(c) contain the name of the pesticide applied; and

(d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person.

History: En. Sec. 27, Ch. 403, L. 1971; R.C.M. 1947, 27-239; amd. Sec. 28, Ch. 668, L. 1989; amd. Sec. 1, Ch. 454, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 454 inserted (1) defining building operator and public building; inserted (2) concerning posting of pesticide application notice; inserted (3) concerning duration of posted notice; inserted (4) concerning record retention; inserted (5) concerning local government standards; and made minor changes in style.

Local Implementation: Section 2, Ch. 454, L. 1997, provided: "An ordinance adopted by a local government pursuant to 80-8-120 before October 1, 1997, must comply with [this act] by January 1, 1998."

80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of $25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.

History: En. Sec. 28, Ch. 403, L. 1971; amd. Sec. 126, Ch. 218, L. 1974; amd. Sec. 14, Ch. 439, L. 1975; amd. Sec. 14, Ch. 462, L. 1977; R.C.M. 1947, 27-240.

80-8-109. Educational programs. (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of a state agency or of the Montana cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section.

History: En. Sec. 29, Ch. 403, L. 1971; R.C.M. 1947, 27-241; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 633, L. 1983; amd. Sec. 1, Ch. 219, L. 1985; amd. Sec. 1, Ch. 181, L. 1989.

80-8-110. Cooperation with other agencies. (1) The department may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department and the department of environmental quality shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to wastes that are toxic, radioactive, corrosive, flammable, irritants, or strong sensitizers or that generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

History: En. Sec. 30, Ch. 403, L. 1971; amd. Sec. 15, Ch. 462, L. 1977; R.C.M. 1947, 27-242; amd. Sec. 7, Ch. 529, L. 1981; amd. Sec. 328, Ch. 418, L. 1995.

Cross-References

Control of timber slash and debris, Title 76, ch. 13, part 4.

Mining and reclamation, Title 82, ch. 1 through 4.

80-8-111. *(Temporary)* **Waste pesticide and pesticide container collection, disposal, and recycling program.** (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.

(6) The department shall consult affected local governments before implementing the collection program under this section. *(Terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

80-8-111. *(Effective July 1, 1999)* **Voluntary waste pesticide reporting system — proposed program — pesticide information.** (1) The department shall establish a voluntary reporting system to encourage pesticide applicators and other persons to report:

(a) the types and volume of waste pesticides in their possession; and

(b) the county where the waste pesticides are stored.

(2) The department shall inventory the waste pesticide information reported under subsection (1) and develop a proposed waste pesticide disposal program for consideration by the legislature.

(3) All waste pesticide information reported to the department under subsection (1) is confidential. The department may summarize the information for purposes of preparing a waste pesticide inventory report that is public information. If a waste pesticide disposal program is not approved by the legislature, the department shall destroy the waste pesticide information received under subsection (1).

History: En. Sec. 2, Ch. 51, L. 1991; amd. Sec. 2, Ch. 465, L. 1993; amd. Sec. 290, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in version effective July 1, 1999, in (2) and in (3), in third sentence after "by the legislature", deleted "in 1993". Amendment effective March 12, 1997.

80-8-112. *(Temporary)* **Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees.** (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to 80-8-111(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided for in 80-8-111. Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action. *(Terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: En. Sec. 3, Ch. 465, L. 1993.

80-8-113 through 80-8-115 reserved.

80-8-116. Pesticide management account — deposit of fees and penalties — investment. (1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) (a) All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

(i) the cost of equipment and facilities;

(ii) the cost of inspecting, investigating, analyzing, and examining:

(A) pesticide products;

(B) applicators, operators, and other users of pesticides;

(C) dealers and retailers selling pesticides;

(D) pesticide equipment, storage, disposal, and operational facilities; and

(iii) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(b) Any civil penalties collected under 80-8-306 must be deposited in the general fund.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund.

History: En. Sec. 10, Ch. 633, L. 1983; amd. Sec. 1, Ch. 588, L. 1991.

80-8-117 through 80-8-119 reserved.

80-8-120. Local pesticide regulation. (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102(6), to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

(A) at least 4 inches in height and 5 inches in width; and

(B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

(A) the words "pesticide application"; and

(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;

(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;

(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed control district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

(A) a spot treatment of an area that is less than 100 square feet;

(B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

(C) an application on land classified as agricultural land or forest land for taxation purposes;

(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;

(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;

(F) an application on a railroad facility or right-of-way;

(G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

(A) educating its citizens of the ordinance's requirements;

(B) compensating personnel to enforce the ordinance; and

(C) prosecution of a violation of the ordinance.

(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105(3)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1).

History: En. Sec. 10, Ch. 465, L. 1993; amd. Sec. 1, Ch. 180, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 180 substituted (1) specifying provisions for a local government to regulate the notification of pesticide application for former (1) through (4) that read: "(1) A unit of local government may adopt an ordinance to regulate pesticide application that may include notification, provided that the ordinance is fully consistent with the authorities provided for in Title 80, chapter 8, and rules adopted under Title 80, chapter 8. The department shall develop a policy for the review and approval of local pesticide ordinances. A unit of local government shall submit a proposed ordinance to the department for verification that the proposed ordinance is consistent with the authorities provided for in Title 80, chapter 8. The ordinance may not be adopted until it has been approved by the department.

(2) A unit of local government may petition the department in writing to adopt rules to address specific local conditions, as provided in 80-8-105(3)(a). The petition must document:

(a) the need for a rule, including the reason that existing rules do not address the particular pesticide application;

(b) the need for specific local rules; and

(c) that a situation exists that threatens or is likely to threaten public health or environmental quality in the jurisdiction of the unit of local government.

(3) Local rules may be administered, enforced, and financed by a unit of local government:

(a) through a cooperative agreement with the department as provided under this section; or

(b) after the department adopts rules authorizing a unit of local government to administer, enforce, and finance an ordinance.

(4) Within 30 days of receiving the petition, the department shall respond to the unit of local government, stating:

(a) whether the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section; and

(b) the procedures and time period for the promulgation of rules by the department, provided that the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section"; in (3), at beginning of first sentence, substituted "subsections (1) and (2), a unit of local government" for "subsection (1), a local government ordinance" and after "pesticides" inserted "or enact notification provisions more stringent than those provided for in subsections (1) and (2)"; and made minor changes in style. Amendment effective April 1, 1997.

Applicability: Section 4, Ch. 180, L. 1997, provided: "An ordinance adopted by a local government under 80-8-120 before [the effective date of this act] [effective April 1, 1997] must comply with [this act] by January 1, 1998."

80-8-121. Penalty. A person who violates a notification ordinance adopted pursuant to 80-8-120:

(1) is subject to a written warning for the first violation;

(2) is guilty of a misdemeanor and upon conviction may be fined not more than $50 for the second violation; and

(3) is guilty of a misdemeanor and upon conviction may be fined not more than $500 for a third or subsequent conviction.

History: En. Sec. 2, Ch. 180, L. 1997.

Compiler's Comments

Applicability: Section 4, Ch. 180, L. 1997, provided: "An ordinance adopted by a local government under 80-8-120 before [the effective date of this act] [effective April 1, 1997] must comply with [this act] by January 1, 1998."

Effective Date: Section 5, Ch. 180, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 1, 1997.

Part 2
Registration and Licensing

Part Cross-References

Departmental rules, 80-8-105.

80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection (8) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The department, the department of public health and human services, and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall use the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of public health and human services and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of public health and human services, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the department, the department of public health and human services, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, public health and human services, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated.

History: En. Sec. 5, Ch. 403, L. 1971; amd. Sec. 121, Ch. 218, L. 1974; amd. Sec. 2, Ch. 462, L. 1977; R.C.M. 1947, 27-217; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1979; amd. Sec. 3, Ch. 633, L. 1983; amd. Sec. 2, Ch. 181, L. 1989; amd. Sec. 2, Ch. 588, L. 1991; amd. Sec. 1, Ch. 139, L. 1993; amd. Sec. 4, Ch. 465, L. 1993; amd. Sec. 329, Ch. 418, L. 1995; amd. Sec. 11, Ch. 73, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 73 in (8)(a), in four places, and in (8)(c) substituted "department of public health and human services" for "department of environmental quality"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Pesticide embargoes, 80-8-303.

Penalties for violations, 80-8-306.

Fee for agricultural chemical ground water protection, 80-15-302.

80-8-202. Prohibited acts. (1) It is unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) any pesticide which has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the trade and chemical name, brand, or trademark under which said article is sold;

(iii) the net weight or measure of the content, subject to such reasonable variations as the department may permit;

(c) any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in 80-8-105, unless the label shall bear, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

(d) the pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall by regulations require to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It is unlawful for any person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules promulgated hereunder or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for his own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201.

History: En. Sec. 6, Ch. 403, L. 1971; R.C.M. 1947, 27-218; amd. Sec. 9, Ch. 20, L. 1979.

Cross-References

Rulemaking authority, 80-8-105.

Penalty for violations, 80-8-306.

80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. An application for a pesticide applicator's license must be accompanied by a fee of $45. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of $30 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112. *(Subsection (5) terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: En. Sec. 9, Ch. 403, L. 1971; amd. Sec. 2, Ch. 447, L. 1973; amd. Sec. 4, Ch. 462, L. 1977; R.C.M. 1947, 27-221; amd. Sec. 2, Ch. 230, L. 1979; amd. Sec. 4, Ch. 633, L. 1983; amd. Sec. 3, Ch. 181, L. 1989; amd. Sec. 5, Ch. 465, L. 1993.

80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before March 1 of that calendar year. Any applicator applying for renewal of license after March 1 shall be assessed a $25 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that he has met all the federal aviation administration and the department of commerce requirements for aerial pesticide applicators.

History: En. Sec. 10, Ch. 403, L. 1971; amd. Sec. 122, Ch. 218, L. 1974; amd. Sec. 33, Ch. 213, L. 1975; amd. Sec. 5, Ch. 462, L. 1977; R.C.M. 1947, 27-222; amd. Sec. 3, Ch. 230, L. 1979; amd. Sec. 1, Ch. 184, L. 1981; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 5, Ch. 633, L. 1983.

80-8-205. Commercial operator. (1) The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

(2) The department may by rule establish a fee to be paid by commercial operators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112. *(Subsection (2) terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: En. Sec. 11, Ch. 403, L. 1971; R.C.M. 1947, 27-223; amd. Sec. 6, Ch. 465, L. 1993.

80-8-206. Applicator's and operator's examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which he has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of licensing.

History: **En. Sec. 12, Ch. 403, L. 1971; R.C.M. 1947, 27-224.**

Cross-References

Publication of public information, 80-8-107.

80-8-207. Dealers. (1) It is unlawful for a person to sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department of agriculture for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of its field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of $45. Dealers applying for renewal of a license shall do so on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a $25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter before completing a sale.

(4) The department shall assess an additional annual license fee of $30 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules. *(Subsection (4) terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: **En. Sec. 13, Ch. 403, L. 1971; amd. Sec. 3, Ch. 447, L. 1973; amd. Sec. 6, Ch. 462, L. 1977; R.C.M. 1947, 27-225; amd. Sec. 4, Ch. 230, L. 1979; amd. Sec. 2, Ch. 184, L. 1981; amd. Sec. 6, Ch. 633, L. 1983; amd. Sec. 4, Ch. 181, L. 1989; amd. Sec. 7, Ch. 465, L. 1993.**

80-8-208. Dealer's examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements.

History: En. Sec. 14, Ch. 403, L. 1971; R.C.M. 1947, 27-226.

80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is $35. The special-use permit is effective for 5 calendar years. The department may establish a staggered years system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

(a) $15 to the department to administer the permitting program;

(b) $5 to the Montana state university-Bozeman extension service for the development of educational materials for farm pesticide applicators; and

(c) $15 to the extension service of the county in which the permit applicant resides for farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting an agricultural commodity on property owned, leased, or rented by the applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending an approved training program. The department shall establish by rule a uniform system of administering the requalification training program. The department may credit only training related to the standards set forth in subsection (3).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to a farm applicator applying nonrestricted pesticides on the applicator's own land or on lands of neighbors if the farm applicator:

(a) operates farm property and operates and maintains pesticide application equipment primarily for the applicator's own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not represent to the public that the farm applicator is a pesticide applicator;

(c) operates pesticide application equipment only in the vicinity of the applicator's own property and for the accommodation of immediate neighbors.

(7) (a) The department shall assess an additional permit fee of $15 on farm applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period. The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit renewal period.

(c) Fees collected under this subsection (7) must be deposited in the state special revenue account pursuant to 80-8-112. *(Subsection (7) terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: En. Sec. 16, Ch. 403, L. 1971; amd. Sec. 8, Ch. 462, L. 1977; R.C.M. 1947, 27-228(part); amd. Sec. 10, Ch. 20, L. 1979; amd. Sec. 3, Ch. 184, L. 1981; amd. Sec. 7, Ch. 633, L. 1983; amd. Sec. 1, Ch. 28, L. 1985; amd. Sec. 8, Ch. 465, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

80-8-210. Licensing nonresidents. Any nonresident applying for a license under this chapter to operate in Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: En. Sec. 17, Ch. 403, L. 1971; R.C.M. 1947, 27-229; amd. Sec. 11, Ch. 20, L. 1979.

80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant or renew or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or permittee is not qualified to sell, use, or apply pesticides under the conditions in the locality in which the licensee or permittee operates or has operated or that the licensee or permittee has committed any of the following acts, each of which is considered a violation of this chapter:

(a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be used;

(b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing a current and appropriate license or permit;

(c) operated in a faulty, careless, or negligent manner;

(d) operated faulty or unsafe equipment;

(e) refused or neglected to comply with the provisions of this chapter, rules adopted under this chapter, or any lawful order of the department;

(f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;

(g) made false or fraudulent records or reports;

(h) operated equipment for the commercial application of a pesticide without having a license or permit;

(i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;

(j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide;

(k) made false or misleading statements in connection with a pest inspection of land, crops, yards, or any premises in an attempt to induce any person to engage the licensee's or permittee's services to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the effectiveness of any pesticide or its application;

(l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint concerning the use of a pesticide.

(2) Decisions of the department relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971; amd. Sec. 9, Ch. 462, L. 1977; R.C.M. 1947, 27-230; amd. Sec. 4, Ch. 184, L. 1981; amd. Sec. 1, Ch. 189, L. 1995.

80-8-212. Retail sale of pesticides — education program. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Subject to the availability of funds, the department and the Montana state university-Bozeman extension service shall enter into a cooperative agreement to establish an education program for retailers and the general public on pests, pesticides, and alternative control methods.

History: En. Sec. 15, Ch. 403, L. 1971; amd. Sec. 4, Ch. 447, L. 1973; amd. Sec. 7, Ch. 462, L. 1977; R.C.M. 1947, 27-227; amd. Sec. 3, Ch. 588, L. 1991; amd. sec. 36, Ch. 308, L. 1995.

80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of $50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of $50; and

(ii) an additional fee of $25 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of $5; and

(ii) an additional fee of $15 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(c) A government agency may not be required to pay more than $600 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee. *(Subsections (3)(a)(ii), (3)(b)(ii), and (3)(d) terminate June 30, 1999—sec. 14, Ch. 465, L. 1993.)*

History: En. Sec. 19, Ch. 403, L. 1971; amd. Sec. 10, Ch. 462, L. 1977; R.C.M. 1947, 27-231; amd. Sec. 8, Ch. 633, L. 1983; amd. Sec. 9, Ch. 465, L. 1993.

80-8-214. Liability. The department shall annually require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules promulgated by the department.

History: En. Sec. 20, Ch. 403, L. 1971; amd. Sec. 29, Ch. 13, L. 1977; amd. Sec. 11, Ch. 462, L. 1977; R.C.M. 1947, 27-232.

Part 3
Enforcement and Penalties

80-8-301. Report of loss or damage — effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

(a) name and address of claimant;

(b) type, kind, and location of property alleged to be injured or damaged;

(c) date the alleged injury or damage occurred;

(d) name of person applying the pesticide and allegedly responsible for the loss or damage;

(e) name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not of itself be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971; R.C.M. 1947, 27-233; amd. Sec. 5, Ch. 184, L. 1981.

80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from sources such as the Journal of the Association of Official Analytical Chemists.

(3) In all administrative or legal actions involving the composition, identification, or quantification of a pesticide, a certified copy of the official analysis signed by the department's authorized chemist shall be accepted as prima facie evidence of the determinations set forth therein.

History: En. Sec. 7, Ch. 403, L. 1971; R.C.M. 1947, 27-219; amd. Sec. 6, Ch. 184, L. 1981.

Cross-References

Departmental rules, 80-8-105.

80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201(5), fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, he shall affix to such article a tag or other appropriate marking giving notice thereof and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. Any person who removes or disposes of such detained or embargoed article by sale or otherwise, without prior permission, or removes or alters the tag or marking, is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the

supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of such supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971; amd. Sec. 28, Ch. 13, L. 1977; amd. Sec. 3, Ch. 462, L. 1977; R.C.M. 1947, 27-220; amd. Sec. 7, Ch. 184, L. 1981.

80-8-304. Investigation and enforcement authority. (1) In enforcing this chapter, the department or its authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

(a) equipment used for applying pesticides;

(b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;

(c) records on the selling or use of pesticides and the person's stock of pesticides;

(d) handling, use, application, storage, and disposal of pesticides by any person;

(e) pesticides being applied or to be applied and to sample the pesticides or agricultural commodities;

(f) the use and application of a pesticide;

(g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples;

(h) a person's compliance with pesticide worker protection standards and labeling, including handlers and workers;

(i) a person's compliance with pesticide ground water and environmental protection agency endangered species standards and labeling; or

(j) a person's compliance with licensing, labeling, permitting, and certification requirements.

(2) The department is authorized to investigate all incidents involving the application, sale, introduction, or use of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents have a reasonable potential to adversely affect the public environment or persons.

(3) The investigation or inspection authority provided for in this section may be exercised over persons not possessing a required license or permit.

History: En. Sec. 31, Ch. 403, L. 1971; amd. Sec. 16, Ch. 462, L. 1977; R.C.M. 1947, 27-243; amd. Sec. 8, Ch. 184, L. 1981; amd. Sec. 2, Ch. 189, L. 1995.

80-8-305. General violations — compliance orders. (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for a person:

(a) to discard any pesticide or pesticide container in a manner that causes injury to humans, domestic animals, or wildlife or that pollutes any waterway in a way harmful to any wildlife in the waterway or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in a manner that endangers humans or the environment or that endangers food or any other products that may be transported, stored, displayed, or distributed with the pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner that is inconsistent with the labeling, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for a person to manufacture, formulate, or store any registered pesticide or a component or byproduct of a registered pesticide in a manner that the pesticide, component, or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. The containment or confinement of odor is exempted from the provisions of this subsection.

(3) (a) The department may issue a compliance order to a person violating the provisions of 80-8-211, the provisions of this section, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(b) The provisions of this subsection (3) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of environmental quality to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of environmental quality is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of environmental quality or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made

to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. Sec. 32, Ch. 403, L. 1971; R.C.M. 1947, 27-244; amd. Sec. 9, Ch. 184, L. 1981; amd. Sec. 5, Ch. 181, L. 1989; amd. Sec. 29, Ch. 668, L. 1989; amd. Sec. 4, Ch. 588, L. 1991; amd. Sec. 3, Ch. 189, L. 1995; amd. Sec. 330, Ch. 418, L. 1995.

80-8-306. Penalties. (1) A person convicted of violating any of the provisions of this chapter or the rules issued under this chapter or who misrepresents, prevents, or attempts to prevent the department or its authorized agent in performance of its duty in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(2) The department or its authorized representative may apply to the district court of the county where a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of another county where a violation has occurred or is about to occur and the department may select and proceed in the court that is most appropriate under the circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter requires the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order. This chapter does not apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than $500 or be imprisoned for not more than 1 year, or both.

(5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this chapter as defined in subsection (5)(e), in addition to other penalties provided in this chapter, may be assessed a civil penalty by the department of not more than $2,500 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department warning, order, or administrative action authorized by this chapter.

(b) A civil penalty may not be assessed unless the person charged was given notice and opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

(c) (i) If after investigation the department determines that a major violation of this chapter has significantly harmed human life, welfare, or safety or affected agricultural commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the penalties assessed in subsection

(5)(a), the department may seek a civil penalty, not to exceed $25,000 for each offense, by filing a complaint in district court.

(ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who willfully commits a major violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(d) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to human health, agricultural commodities, livestock, or the environment.

(e) A major violation of this chapter includes:

(i) misuse of a pesticide that results in proven exposure of humans, agricultural commodities, or livestock or results in proven harm to human health, agricultural commodities, livestock, or the environment. As used in this subsection (i), "misuse" means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules.

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit;

(vi) noncompliance with pesticide worker protection standards and labeling;

(vii) noncompliance with pesticide ground water and environmental protection agency endangered species standards and labeling;

(viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and standards; or

(ix) reoccurrence of any identical violation of this chapter within 2 years of the first violation.

(f) If the department is unable to collect the civil penalty or if a person fails to pay all or a portion of the civil penalty as determined by the department, the department may recover that amount by action in the appropriate district court.

History: En. Sec. 34, Ch. 403, L. 1971; amd. Sec. 17, Ch. 462, L. 1977; R.C.M. 1947, 27-245; amd. Sec. 10, Ch. 184, L. 1981; amd. Sec. 9, Ch. 633, L. 1983; amd. Sec. 4, Ch. 189, L. 1995.

Cross-References

Injunctive relief, Title 27, ch. 19.

Misdemeanor — when no penalty specified, 46-18-212.

Common carrier defined, 69-11-101.

Part 4

Model School Integrated Pest and Pesticide Management Safety Program

Part Cross-References

Duties of school districts, Title 20, ch. 6.

80-8-401. Short title. This part may be cited as the "Model School Integrated Pest and Pesticide Management Safety Program Act".

History: En. Sec. 1, Ch. 177, L. 1993.

80-8-402. Statement of policy. The legislature finds and declares that:

(1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;

(2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;

(3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and

(4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

History: En. Sec. 2, Ch. 177, L. 1993.

80-8-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture as provided for in 2-15-3001.

(2) "Director" means the director of agriculture as provided for in 2-15-3001.

(3) "School district" means a school district established according to Title 20, chapter 6.

History: En. Sec. 3, Ch. 177, L. 1993.

80-8-404. Model school integrated pest and pesticide management safety program. (1) The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994. The model program must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children from exposure to pesticides and the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting school children from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, school personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program.

History: **En. Sec. 4, Ch. 177, L. 1993.**

80-8-405. Policymaking authority. The department may adopt policies and guidelines to implement this part.

History: **En. Sec. 5, Ch. 177, L. 1993.**

CHAPTER 9

COMMERCIAL FEEDS

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Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

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U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

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Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — crop or grain liens for spraying or dusting, Title 71, ch. 3, part 9.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

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Part 1

General Provisions

80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of subsections (1) through (5) of 80-9-204, which are distributed for use as feed or for mixing in feed. However, the department may by rule exempt from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of subsections (1) through (5) of 80-9-204.

(3) "Custom-mixed feed" means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specifications mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(4) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed.

(5) "Distributor" means a person who distributes.

(6) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(9) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

(10) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

(11) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(12) "Official sample" means a sample of feed taken by the department in accordance with the provisions of subsections (3), (5), or (6) of 80-9-301.

(13) "Percent" or "percentage" means percentage by weights.

(14) "Person" means an individual, partnership, corporation, or association.

(15) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(16) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(17) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(18) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Ton" means a net weight of 2,000 pounds avoirdupois.

History: En. Sec. 1, Ch. 356, L. 1973; R.C.M. 1947, 3-2025; amd. Sec. 12, Ch. 20, L. 1979.

80-9-102. Administration. This chapter shall be administered by the Montana department of agriculture.

History: En. Sec. 2, Ch. 356, L. 1973; R.C.M. 1947, 3-2026.

80-9-103. Rules — adoption by department. (1) The department may adopt those rules for commercial feeds and pet foods which are specifically authorized in this chapter and those other reasonable rules necessary for the efficient enforcement of this chapter. Unless it determines that they are inconsistent with this chapter or are not appropriate to conditions which exist in this state, the department, in the interest of uniformity, shall adopt:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this chapter to adopt that rule.

(2) In adopting rules the department will follow procedures prescribed in the Montana Administrative Procedure Act.

History: En. Sec. 10, Ch. 356, L. 1973; R.C.M. 1947, 3-2034.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department defined, 80-1-101.

Inspection fees — filing of annual statement, 80-9-206.

Related livestock rules — powers of Department of Livestock, 81-2-102.

80-9-104. Cooperation with other agencies. The department may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out this chapter.

History: En. Sec. 14, Ch. 356, L. 1973; R.C.M. 1947, 3-2038.

80-9-105. Publications. The department shall publish at least annually, in a form it considers proper, information concerning the sale of commercial feed, data on production and use, and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed shall not disclose the operations of any person.

History: En. Sec. 15, Ch. 356, L. 1973; R.C.M. 1947, 3-2039.

Part 2

Production and Distribution

80-9-201. Permits and registration. (1) (a) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. All new applicants or those failing to renew a permit by January 1 of each year shall pay a nonrefundable fee of $25 per calendar year for each facility, distribution point, or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(b) Feed permit renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of $25 for each permit.

(2) (a) No person may distribute in this state a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration must be accompanied by a nonrefundable fee of $6.50 for each product other than a pet food or specialty pet food and a nonrefundable fee of $25 for each pet food or specialty pet food.

(b) The registration of commercial feeds and specialty pet food is for a period of 1 year commencing October 1 and ending September 30 of each year.

(3) An applicant for registration shall file with the department the following information:

(a) his name and address;

(b) a complete copy of the label or label facsimile that will appear on the product;

(c) when requested by the department, promotional material and claims made about the product; and

(d) any other necessary information requested by the department.

(4) The department may refuse registration of any commercial feed not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with this chapter. No registration may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this chapter.

History: En. Sec. 3, Ch. 356, L. 1973; R.C.M. 1947, 3-2027; amd. Sec. 1, Ch. 36, L. 1985; amd. Sec. 1, Ch. 38, L. 1989.

80-9-202. Labeling. (1) A commercial feed, except a custom-mixed feed, shall be accompanied by a label containing:

(a) the net weight;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function or it may exempt commercial feeds or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers.

(e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all custom-mixed feed containing drugs. The department may by rule require directions for the use of other custom-mixed feeds when necessary for their safe and effective use.

(f) precautionary statements which the department by rule determines are necessary for safe and effective use of the custom-mixed feeds.

History: En. Sec. 4, Ch. 356, L. 1973; R.C.M. 1947, 3-2028.

80-9-203. Misbranded feed. A commercial feed is misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed;

(3) it is not labeled as required in 80-9-202;

(4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;

(5) any word, statement, or other information required by this chapter to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 5, Ch. 356, L. 1973; R.C.M. 1947, 3-2029.

80-9-204. Adulterated feed. A commercial feed is adulterated if:

(1) it contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) it contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive);

(3) it is or it contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) it is a raw agricultural commodity and it contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) it is or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act;

(6) any valuable constituents have been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(7) its composition or quality falls below or differs from that stated on its label;

(8) it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current

good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act unless it determines that they are not appropriate to the conditions which exist in this state;

(9) it contains viable weed seeds in amounts exceeding the limits which the department established by rule.

History: **En. Sec. 6, Ch. 356, L. 1973; R.C.M. 1947, 3-2030.**

80-9-205. Prohibitions. No person may:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which are adulterated within the meaning of subsections (1) through (5) of 80-9-204;

(4) remove or dispose of a commercial feed in violation of an order under 80-9-302;

(5) fail to register or obtain a permit in accordance with 80-9-201;

(6) violate 80-9-304;

(7) fail to pay inspection fees and file reports as required by 80-9-206.

History: **En. Sec. 7, Ch. 356, L. 1973; R.C.M. 1947, 3-2031.**

Cross-References

Violations — remedies, 80-9-301 through 80-9-303.

Prohibition of disclosure of information acquired under this chapter, 80-9-304.

80-9-206. Inspection fees — filing of annual statement. (1) An inspection fee must be paid on all commercial feeds, including custom-mix feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) The inspection fee must be set by rule on a cents-per-ton basis, except that the first 10 tons are exempt. The department may adjust the fee by rule to adequately fund the administration of this chapter. Adjustments may be made only after holding a public hearing on the proposed changes as required in 80-9-103 and must remain within the limits of 5 cents to 25 cents per ton. The effective date of any rule adjusting fees is January 1 of the calendar year following the issuance of the rule. All permit holders are to be notified immediately of any changes in fees.

(b) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees must be paid on each commercial feed, including custom-mix feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site, but he is responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in 80-9-201(1) shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31) and upon filing the statement shall pay the inspection fee at the rate stated in subsection (1). Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% with a minimum of $10 added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit.

History: En. Sec. 8, Ch. 356, L. 1973; R.C.M. 1947, 3-2032; amd. Sec. 2, Ch. 38, L. 1989; amd. Sec. 56, Ch. 16, L. 1991.

80-9-207. Deposit of fees. (1) All fees collected for permits, registration, and inspection shall be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods and means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the state special revenue fund.

History: En. Sec. 9, Ch. 356, L. 1973; amd. Sec. 5, Ch. 16, L. 1977; R.C.M. 1947, 3-2033; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

State treasury fund structure, 17-2-102.

Unified investment program — general provisions, 17-6-201.

Part 3
Enforcement and Penalties

80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge may enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in them. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(8).

(2) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

(4) If the owner of a factory, warehouse, or establishment described in subsection (1) or his agent refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.

(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists or with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in 80-9-101(12) and obtained and analyzed as provided for in subsections (3), (5), and (6) of this section.

(9) All chemical analyses shall be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman.

History: En. Sec. 11, Ch. 356, L. 1973; R.C.M. 1947, 3-2035; amd. sec. 36, Ch. 308, L. 1995.

80-9-302. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant or the person holding the commercial feed, shall begin proceedings for condemnation.

(2) Commercial feed not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this chapter and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

History: En. Sec. 12, Ch. 356, L. 1973; R.C.M. 1947, 3-2036.

80-9-303. Violation — penalty — injunction — appeal. (1) A person who violates this chapter or who obstructs, prevents, or attempts to obstruct or prevent the department in the performance of its duty under this chapter is guilty of a misdemeanor and shall be fined not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for a subsequent violation.

(2) Nothing in this chapter requires the department to prosecute, begin seizure proceedings, or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(3) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present his view to the department.

(4) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within 30 days seek judicial review in the district court where the person resides or has his place of business.

History: En. Sec. 13, Ch. 356, L. 1973; R.C.M. 1947, 3-2037(1) thru (5).

Cross-References

Injunctive relief provisions, Title 27, ch. 19.

80-9-304. Disclosure of information prohibited. A person who uses to his own advantage or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding any information acquired under this chapter concerning any method, records, formulations, or processes which as a trade secret is entitled to protection is guilty of a misdemeanor and shall be fined not more than $300 or imprisoned for not more than 1 year, or both. However, the department may exchange information of a regulatory nature with the proper officials of the United States government or of other states who are similarly prohibited by law from revealing that information.

History: En. Sec. 13, Ch. 356, L. 1973; R.C.M. 1947, 3-2037(6).

Cross-References

Constitutional right to information, Art. II, sec. 9, Mont. Const.

Constitutional right of privacy, Art. II, sec. 10, Mont. Const.

CHAPTER 10

COMMERCIAL FERTILIZERS

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Fertilizer Advisory Committee, 2-15-1516.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

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Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

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Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

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Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

Part 1
General Provisions

80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(a) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form or in containers of greater than 1,000 pounds.

(b) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than one of the primary plant nutrients (nitrogen, phosphoric acid, and potash);

(ii) has approximately 85% of its plant nutrient content present in the form of a single chemical compound; or

(iii) is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(c) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(d) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of 1,000 pounds or less.

(e) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(3) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(4) "Distributor" means any person who distributes.

(5) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(6) "Licensee" means any person who has obtained a license from the department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

(7) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.

(8) "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

(9) "Manufacturer" is a person who manufactures commercial fertilizer or soil amendments.

(10) "Official sample" means any sample of commercial fertilizer taken by the department and so designated by the department.

(11) "Percent or percentage" means the percentage by weight.

(12) "Person" means an individual, partnership, association, firm, or corporation.

(13) "Registrant" means the person who registers commercial fertilizer and/or soil amendment.

(14) "Soil amendment" means any material not included under commercial fertilizer or those products subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics.

(15) "Ton" means a net weight of 2,000 pounds avoirdupois.

History: En. 3-1714.2 by Sec. 1, Ch. 279, L. 1975; R.C.M. 1947, 3-1714.2; amd. Sec. 2, Ch. 197, L. 1985.

80-10-102. Guaranteed analysis. (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(a) The following plant nutrients shall be guaranteed:

Total nitrogen (N) -- %
Available phosphoric acid (P_2O_5) -- %
Soluble potash (K_2O) --- %

(b) For unacidulated mineral phosphatic materials and basic slag, bonemeal, tankage, and other organic phosphatic materials, the total phosphoric acid and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients, including but not limited to oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton shall be guaranteed when required by regulation.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N) -- %
Available phosphorus (P) -- %
Soluble potassium (K) -- %

(3) The effective date of the rule may not be less than 6 months following the adoption of the rule. For a period of 2 years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.

(4) Soil amendments shall guarantee the minimum quantity of each active ingredient in terms approved by the department or in terms as set forth in rules issued by the department. They shall also meet any other requirements established by rule by the department.

History: En. 3-1714.1 by Sec. 87, Ch. 218, L. 1974; Sec. 3-1714.1, R.C.M. 1947; amd. and redes. 3-1714.3 by Sec. 2, Ch. 279, L. 1975; amd. Sec. 18, Ch. 13, L. 1977; R.C.M. 1947, 3-1714.3.

Cross-References

Penalties for deficiencies, 80-10-208.

80-10-103. Assessment to fund educational and experimental programs — collection. Moneys to fund 80-10-104 through 80-10-106 must be produced by an assessment of 35 cents per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in 80-10-207 and shall be collected from the manufacturer.

History: En. Sec. 1, Ch. 397, L. 1971; amd. Sec. 19, Ch. 13, L. 1977; R.C.M. 1947, 3-1729; amd. Sec. 3, Ch. 197, L. 1985.

80-10-104. Allocation of assessment. The assessment shall be collected by the department and up to 1% shall be retained by the department for costs of collection. The balance shall be deposited in the state special revenue fund with 50% for use by the cooperative extension service and 50% for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in 2-15-1516 and approved by the respective directors.

History: En. Sec. 2, Ch. 397, L. 1971; amd. Sec. 98, Ch. 218, L. 1974; R.C.M. 1947, 3-1730; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Departmental fees, 80-10-207.

80-10-105. Educational and experimental programs. (1) The moneys provided by 80-10-103 shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

(2) Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environmental protection on the many varied soil and climatic conditions of the state.

History: En. Sec. 3, Ch. 397, L. 1971; R.C.M. 1947, 3-1731.

80-10-106. Meetings and functions of advisory committee. The advisory committee shall meet a minimum of once each year with the directors of the cooperative extension service and the agricultural experiment station to perform the following functions:

(1) review the educational and experimental programs financed by this chapter;

(2) recommend needed programs and/or program adjustments;

(3) report to the Montana house and/or senate agriculture committees as requested.

History: En. Sec. 6, Ch. 397, L. 1971; R.C.M. 1947, 3-1734.

Part 2
Licensing and Registration

80-10-201. Registration. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures shall be registered by or on behalf of the manufacturer before distribution in this state. The application for registration shall be submitted to the department on a form furnished or approved by the department and shall be accompanied by a nonrefundable fee of $10 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers which shall be registered at a nonrefundable fee of $25 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration shall include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department.

(b) Further, the department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product which is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

(4) No manufacturer may reregister his product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(1), (2); amd. Sec. 4, Ch. 197, L. 1985; amd. Sec. 1, Ch. 27, L. 1989.

Cross-References

Fee for agricultural chemical ground water protection, 80-15-302.

80-10-202. License required. No person shall distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures or specialty fertilizer, until a license to distribute has been obtained from the department for each facility distributing into this state and for each handling facility in this state. All new applicants or those failing to renew their licenses by January 1 of each year shall pay a nonrefundable $75 fee for each license. The department may exempt, by rule, manufacturers. All licenses expire on December 31 of each year and are subject to the following:

(1) The application for license shall be on forms provided by the department.

(2) The licensee is not required to register a grade of fertilizer registered by the manufacturer or blended to grade from registered products by the licensee.

(3) License renewals received by the department prior to January 1 of each year must be accompanied by a fee of $50 for each license."

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(4); amd. Sec. 2, Ch. 27, L. 1989.

80-10-203. Fertilizer to be uniform. (1) The plant nutrient content of every brand and grade of commercial fertilizer shall remain uniform for the period of registration.

(2) The manufacturer or distributor shall at all times deliver a uniform grade of fertilizer or soil amendment. When two or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(3), (5).

80-10-204. Labeling. (1) Any commercial fertilizer distributed in this state in packages shall have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

(a) the net weight;

(b) the name and address of the manufacturer or distributor guaranteeing the analysis;

(c) the brand and product name;

(d) the grade;

(e) the guaranteed analysis; and

(f) other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

(a) the guaranteed analysis of the product in the bin; and

(b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, shall be accompanied by a clearly legible document which shall be supplied to the purchaser at the time of delivery and at the time his invoice is delivered. The document shall show:

(a) net weight;

(b) name and address of the distributor or manufacturer guaranteeing the analysis;

(c) guaranteed analysis or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and

(d) other requirements as established by rule.

(4) When distributed in containers, soil amendments shall have a label affixed to or printed on the container. When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain the following information:

(a) net weight;

(b) name and address of the registrant or licensee who is responsible for the product;

(c) brand and product name;

(d) guaranteed analysis;

(e) other requirements, such as particle size, as established by rule.

History: En. 3-1716.1 by Sec. 4, Ch. 279, L. 1975; R.C.M. 1947, 3-1716.1; amd. Sec. 5, Ch. 197, L. 1985.

80-10-205. Misbranding and adulteration prohibited. No person shall distribute a misbranded or adulterated fertilizer or soil amendment. A commercial fertilizer or soil amendment is misbranded if it:

(1) carries any false or misleading statement upon or attached to the container or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the product;

(2) is distributed under the name of another product;

(3) is not labeled as required in 80-10-204 and in accordance with rules prescribed under this chapter; or

(4) purports to be or is represented as a commercial fertilizer or is represented as containing a plant nutrient or commercial fertilizer, unless that plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type rule, the department shall give due regard to commonly accepted definitions and official fertilizer terms as issued by the association of American plant food control officials.

History: En. 3-1720.1 by Sec. 7, Ch. 279, L. 1975; R.C.M. 1947, 3-1720.1.

80-10-206. Inspection, sampling, and analysis. (1) The department, in cooperation with the agricultural experiment station of Montana state university-Bozeman, shall sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers or soil amendments are in compliance with this chapter. The department may enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(2) The methods of analysis and sampling shall be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, shall be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any commercial fertilizer is deficient in plant food or soil amendment is deficient, shall be guided solely by the official sample obtained and analyzed as provided for in subsections (1) and (2) of this section.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer or soil amendment is found to be subject to penalty or other legal action, the department shall forward to the registrant notification of the violation at least 10 days before its report is made public. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: En. Sec. 7, Ch. 41, L. 1957; amd. Sec. 90, Ch. 218, L. 1974; amd. Sec. 6, Ch. 279, L. 1975; R.C.M. 1947, 3-1718; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Violations — enforcement proceedings — judicial review, 80-10-303.

80-10-207. Fees. (1) (a) A manufacturer registering under 80-10-201(1) shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(i) inspection of fertilizers other than anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the inspection fee not to exceed a maximum of 25 cents per ton to maintain adequate funding for the administration of this part. A change in fee becomes effective on the first day of a reporting period. All manufacturers must be given notice of a change in fees before the effective date.

(ii) inspection of anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the anhydrous ammonia inspection fee not to exceed a maximum of 65 cents per ton to maintain adequate funding for the administration and enforcement of part 5 of this chapter. A change in fee becomes effective on the first day of a reporting period. All registrants and manufacturers of anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) assessment, the fee prescribed in 80-10-103. The assessment fee must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold in a 6-month period, there must be paid to the department a fee of $5 for each soil amendment for each 6-month period in lieu of the fee of 10 cents per ton. Inspection fees must be used by the department for administration of this part.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period.

(ii) Each manufacturer who registers or a person who registers on the manufacturer's behalf a soil amendment or commercial fertilizer in this state, except specialty fertilizer and unmanipulated manures, shall file with the department on forms furnished or approved by the department a monthly statement setting forth the number of net tons of each registered commercial fertilizer and soil amendment distributed in this state during the month and to whom it was distributed. The report is due on or before the 30th day of the following month. The manufacturer or person registering on behalf of the manufacturer shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made within 30 days after the end of the period, a collection fee amounting to 10% of the amount due but not less than $10 must be assessed against the manufacturer and the amount of fees due constitutes a debt and becomes the basis of a judgment against the manufacturer.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and

facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) of this section pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund.

History: En. 3-1717.1 by Sec. 5, Ch. 279, L. 1975; R.C.M. 1947, 3-1717.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 197, L. 1985; amd. Sec. 8, Ch. 310, L. 1985; amd. Sec. 3, Ch. 27, L. 1989; amd. Sec. 7, Ch. 220, L. 1995.

Cross-References

State treasury fund structure, 17-2-102.

Assessments to fund educational and experimental programs — collection, 80-10-103.

Anhydrous ammonia defined, 80-10-502.

80-10-208. Penalties. (1) A penalty of two times the commercial value of the deficiency, as determined by the dealer's or manufacturer's price on the date of sampling of the deficiency or deficiencies, shall be assessed:

(a) if the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant foods (NPK) beyond the investigational allowance as established by regulation; or

(b) if the overall index value of the fertilizer is below the level established by regulation.

(2) When a commercial fertilizer is subject to a penalty under both subsections (1)(a) and (1)(b), the larger penalty applies.

(3) Deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under subsections (1)(b),(1)(c), and (1)(d) of 80-10-102 which the registrant is required to or may guarantee shall be evaluated, and penalties shall be assessed at two times the commercial value of the deficiency as determined by the dealer's retail price on the date of sampling.

(4) Nothing contained in this section shall prevent any person from appealing the department's decision to a court of competent jurisdiction.

(5) All penalties assessed under this section shall be paid to the consumer of the lot, not to exceed 100 tons, of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the department to the registrant or licensee. If at the end of the 3-month period the consumer cannot be found, receipts shall be taken and promptly forwarded to the department for deposit in the state special revenue fund as provided in 80-10-207.

History: En. 3-1726.1 by Sec. 13, Ch. 279, L. 1975; R.C.M. 1947, 3-1726.1; amd. Sec. 1, Ch. 277, L. 1983.

80-10-209. Publications. The department shall publish at least annually information concerning the sales of commercial fertilizers and soil amendments together with data on their production and use as it considers advisable and shall report the results of the analyses based on official samples of commercial fertilizers and soil amendments sold in this state.

History: **En. Sec. 11, Ch. 41, L. 1957; amd. Sec. 92, Ch. 218, L. 1974; amd. Sec. 9, Ch. 279, L. 1975; R.C.M. 1947, 3-1722.**

80-10-210. Licensee reports — confidentiality — inspection — failure to file. (1) Information contained in the reports required by 80-10-207(3) shall be held confidential by the department. Summary data published by the department shall be in a form that will not disclose details of any operation or business.

(2) The department may inspect and audit, during normal business hours, each licensee's records for the purpose of verifying tonnage reports.

(3) Failure to file an accurate report constitutes a violation of this chapter and may be punished by fine, revocation of license, or both.

History: **En. 3-1721.1 by Sec. 8, Ch. 279, L. 1975; R.C.M. 1947, 3-1721.1; amd. Sec. 13, Ch. 20, L. 1979.**

80-10-211. Cancellation or refusal of registration or licenses. (1) The department may cancel the registration of any commercial fertilizer or soil amendment and may refuse to register any commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no registration may be revoked or refused until the registrant is given the opportunity to amend his application or correct other practices.

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no license may be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department.

History: **En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963; amd. Sec. 94, Ch. 218, L. 1974; amd. Sec. 11, Ch. 279, L. 1975; R.C.M. 1947, 3-1724.**

80-10-212. Exchanges between manufacturers. Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendment to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendment to manufacturers or manipulators who have registered their brands and grades or licensed their facilities as required by the provisions of this chapter.

History: **En. Sec. 17, Ch. 41, L. 1957; amd. Sec. 15, Ch. 279, L. 1975; R.C.M. 1947, 3-1728.**

Part 3
Enforcement

80-10-301. Rules — adoption by department. (1) The department may adopt those rules for commercial fertilizer and soil amendment which are specifically authorized in this chapter and those other reasonable rules necessary for the efficient enforcement of this chapter.

(2) In adopting rules the department shall follow procedures prescribed in the Montana Administrative Procedure Act.

History: En. 3-1723.1 by Sec. 10, Ch. 279, L. 1975; R.C.M. 1947, 3-1723.1.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-10-302. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial fertilizer or soil amendment is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial fertilizer or soil amendment not to dispose of it in any manner until written permission is granted by the department or the court. The department shall release the product when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant or the person holding the product, shall begin proceedings for condemnation.

(2) Commercial fertilizer or soil amendment not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the product is located. If the court finds the product in violation of this chapter and orders its condemnation, the fertilizer or amendment shall be disposed of in any manner consistent with the quality of the product and state law. The disposition of the product may not be ordered by the court without first giving the owner or person from whom the product was seized an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this chapter.

History: En. 3-1725.1 by Sec. 12, Ch. 279, L. 1975; R.C.M. 1947, 3-1725.1.

80-10-303. Violations — enforcement proceedings — judicial review. (1) If it appears from the examination of any commercial fertilizer or from the inspection of any anhydrous ammonia facility that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified shall be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter is guilty of a misdemeanor and shall be fined not less than $300 or more than $500 for the first violation and not less than $300 or more than $1,000 for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this

chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine his rights, he may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable.

History: En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965; amd. Sec. 97, Ch. 218, L. 1974; amd. Sec. 14, Ch. 279, L. 1975; R.C.M. 1947, 3-1727; amd. Sec. 9, Ch. 310, L. 1985.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Injunctive relief provisions, Title 27, ch. 19.

Anhydrous ammonia facility defined, 80-10-502.

Part 4 reserved

Part 5
Anhydrous Ammonia Facilities

80-10-501. Short title. This part shall be known and may be cited as the "Anhydrous Ammonia Facilities Safety Act".

History: En. Sec. 1, Ch. 310, L. 1985.

80-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Anhydrous ammonia" means a compound formed by a combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume, which compound is in either gaseous or liquid form and is used primarily as fertilizer.

(2) "Anhydrous ammonia facility" or "facility" means any building, tank, or system of equipment used for processing, storing, or distributing anhydrous ammonia and includes all appurtenances to such building, tank, or system.

History: En. Sec. 2, Ch. 310, L. 1985.

80-10-503. Rulemaking authority and requirements. (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. Such rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules shall require the owner to place his name and phone number on his anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules.

History: **En. Sec. 3, Ch. 310, L. 1985.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

80-10-504 and 80-10-505 reserved.

80-10-506. Preexisting facilities. Any facility in operation prior to the adoption of rules under 80-10-503 that is not in compliance with the rules must be allowed to continue in operation unless the department, after inspection and written notice to the owner or operator, makes a determination that the facility presents a safety hazard to employees, other persons using the facility, or the public.

History: **En. Sec. 4, Ch. 310, L. 1985.**

80-10-507. Variance. A person who owns or controls a facility may request in writing from the department a variance, which is an exemption or partial exemption from any rule governing the design, construction, repair, alteration, location, installation, or operation of a facility.

History: **En. Sec. 5, Ch. 310, L. 1985.**

80-10-508. Enforcement. This part must be enforced as provided in 80-10-303.

History: **En. Sec. 6, Ch. 310, L. 1985.**

80-10-509. Funding. Administration and enforcement of the provisions of this part and the rules adopted under 80-10-503 must be funded through expenditures of the anhydrous ammonia account established under 80-10-207(5).

History: **En. Sec. 7, Ch. 310, L. 1985.**

CHAPTER 11

MARKETING

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Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Montana Wheat and Barley Committee, 2-15-3002.

Montana Agriculture Development Council, 2-15-3015.

County agricultural and livestock services, 7-21-3201 through 7-21-3203.

Public markets, Title 7, ch. 21, part 33.

City to weigh and inspect grain and hay, 7-21-4203.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — greenbelt appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

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Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-241.

Taxation provisions — corporate license tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline license and special fuels use taxes, Title 15, ch. 70, parts 2 and 3.

U.C.C. — warehouse receipts and other shipping documents, Title 30, ch. 7.

U.C.C. — financial obligations — perfection of security interests in farm equipment, 30-9-302, 30-9-307.

U.C.C. — agricultural liens — rules for filing — perfection and priority rights, 30-9-421.

U.C.C. — agricultural liens — filing provisions not to affect Department authority as to branded livestock, 30-9-423.

Weight and measure of berries and small fruits, 30-12-408.

Cooperative agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

Montana Food, Drug, and Cosmetic Act — when food adulterated, Title 50, ch. 31, part 1; 50-31-202.

Sale of agricultural goods by state institutions, Title 53, ch. 1, part 3.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Free fare for caretaker of vegetables and fruit shipped by railroad, 69-11-208.

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

Suitable railroad cars to be furnished for grain or other bulk commodity shipments, 69-14-921.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — crop or grain liens for spraying or dusting, Title 71, ch. 3. part 9.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Agricultural loans — loan guaranty program — fund, 80-12-215, 80-12-216.

Marketing — export assistance, Title 90, ch. 9, part 4.

Part 1
Agricultural Marketing and Transportation

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Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

80-11-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural products" means crops, livestock, and livestock products.

(2) "Marketing" means all activities involved in getting agricultural products from the producer to the consumer and includes transportation, processing, and distribution.

History: En. Sec. 2, Ch. 330, L. 1969; Sec. 3-117, R.C.M. 1947; amd. and redes. 3-3002 by Sec. 6, Ch. 218, L. 1974; R.C.M. 1947, 3-3002.

80-11-102. Intent of legislature. It is the intent of the legislature that the department of agriculture coordinate marketing from the initial producer to the consumer and reduce marketing cost by assisting both producer and industry to find ways to more efficiently market their products. The department shall also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. It shall work with farm leaders, farmer cooperatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups, and others as a means of correcting marketing inefficiencies or eliminating restrictions.

History: En. Sec. 1, Ch. 330, L. 1969; Sec. 3-116, R.C.M. 1947; amd. and redes. 3-3001 by Sec. 5, Ch. 218, L. 1974; R.C.M. 1947, 3-3001.

80-11-103. Department's marketing duties. The department shall:

(1) keep abreast of research results in the subject matter area of marketing;

(2) coordinate work with local, state, and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) coordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) investigate the costs of marketing;

(6) gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices, and rates, including common and cold storage of food products;

(7) promote, assist, and encourage the organization and operation of cooperative and other associations and organizations for improving the relations and services among producers, distributors, and consumers of food products;

(8) investigate the practice and methods concerning the marketing of agricultural products;

(9) act as mediator or arbitrator, when invited, in a controversy or issue that may arise between producers and distributors;

(10) assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969; Sec. 3-119, R.C.M. 1947; amd. and redes. 3-3003 by Sec. 7, Ch. 218, L. 1974; R.C.M. 1947, 3-3003.

Cross-References

Department defined, 80-1-101.

80-11-104. Cooperation of state agencies. All agencies of the state which participate in marketing shall cooperate with and assist the department.

History: En. Sec. 8, Ch. 330, L. 1969; Sec. 3-123, R.C.M. 1947; amd. and redes. 3-3004 by Sec. 8, Ch. 218, L. 1974; R.C.M. 1947, 3-3004.

Part 2

Wheat and Barley Research and Marketing

80-11-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Commercial channels” means the sale of wheat or barley for any use when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(2) “Committee” means the Montana wheat and barley committee provided for in 2-15-3002.

(3) “First purchaser” means any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to wheat or barley from a grower and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat or barley is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

(4) “Grower” means any landowner personally engaged in growing wheat or barley, a tenant of the landowner personally engaged in growing wheat or barley, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices, and arrangements.

(5) “Sale” includes any pledge or mortgage of wheat or barley after harvest to any person, public or private.

History: En. Sec. 4, Ch. 314, L. 1967; amd. Sec. 109, Ch. 218, L. 1974; amd. Sec. 2, Ch. 71, L. 1975; R.C.M. 1947, 3-2904; amd. Sec. 1, Ch. 630, L. 1983; amd. Sec. 2, Ch. 48, L. 1987.

80-11-202. Declaration of policy. In the presence of the facts that wheat and barley are the principal grain crops produced in Montana and as such are agricultural resources of the first magnitude in the economy of the inhabitants of Montana, prime factors in the production of wealth and the development and stabilization of property values and of activities and enterprises that are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat and barley are commodities that enter a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity, and general welfare of its people by encouraging and promoting intensive, scientific, and practical research into all phases of wheat and barley culture and production, marketing, and use and into the development of markets for wheat and barley grown in Montana by the department.

History: En. Sec. 2, Ch. 314, L. 1967; amd. Sec. 108, Ch. 218, L. 1974; amd. Sec. 1, Ch. 71, L. 1975; R.C.M. 1947, 3-2902; amd. Sec. 3, Ch. 507, L. 1991.

80-11-203. Compensation — per diem. Members of the committee shall receive no salary but shall be paid from the wheat and barley account in the state special revenue fund a per diem of $25 for each day they are engaged in the transaction of official business, together with their actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while on official business.

History: En. Sec. 6, Ch. 314, L. 1967; amd. Sec. 110, Ch. 218, L. 1974; amd. Sec. 3, Ch. 71, L. 1975; amd. Sec. 5, Ch. 439, L. 1975; R.C.M. 1947, 3-2906; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 48, L. 1987; amd. Sec. 9, Ch. 700, L. 1989.

80-11-204. Election of chairman — time of meetings. At the first meeting of the administrative committee, it shall elect a chairman from among its members. The committee shall meet at least once every 3 months and at such other times as called by the chairman or by any three members of the committee.

History: En. Sec. 8, Ch. 314, L. 1967; R.C.M. 1947, 3-2908.

80-11-205. Powers of the committee. (1) The committee may:

(a) adopt rules necessary for the administration of this part;

(b) provide, through the department, for the enforcement of this part;

(c) provide for the conduct of research into the production, marketing, and uses of wheat and barley;

(d) enter into contracts or agreements with units of the Montana university system and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this part. The committee may not establish research units or agencies of its own.

(2) Researchers or professional or scientific personnel may not be employed to carry out this part except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this part permit participation in state or federal political action by the committee.

History: En. Sec. 9, Ch. 314, L. 1967; amd. Sec. 111, Ch. 218, L. 1974; amd. Sec. 4, Ch. 71, L. 1975; R.C.M. 1947, 3-2909; amd. Sec. 2, Ch. 630, L. 1983; amd. Sec. 4, Ch. 507, L. 1991.

80-11-206. Maximum annual assessment on wheat and barley grown, delivered, or stored. (1) There is an annual assessment of not more than 10 mills per bushel on all wheat and not more than 15 mills per hundredweight on all barley grown, delivered, or stored in the state of Montana and sold through commercial channels.

(2) The assessment is levied and imposed:

(a) in the case of a sale of wheat or barley, at the time of first sale of any wheat or barley by a seller, and must be collected by the first purchaser of the wheat or barley from the seller at the time of each settlement for wheat or barley purchased;

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program other than the commodity credit corporation, and must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan; or

(c) in the case of wheat or barley pledged under the federal commodity credit corporation, and the assessment must be collected at the time of purchase, not at the time a lease or loan is made under the program.

(3) The assessment levied under the provisions of this part must be deducted and collected as provided by this part, whether the wheat or barley is stored in this or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once irrespective of the number of times the wheat or barley is the subject of a sale, pledge, mortgage, or other transaction. The assessment is imposed and attaches on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley seller parts with title to the wheat or barley or creates some interest in the wheat or barley in a pledgee, mortgagee, or other person.

History: En. Sec. 11, Ch. 314, L. 1967; amd. Sec. 1, Ch. 201, L. 1971; amd. Sec. 5, Ch. 71, L. 1975; R.C.M. 1947, 3-2911; amd. Sec. 1, Ch. 530, L. 1979; amd. Sec. 1, Ch. 31, L. 1983; amd. Sec. 1, Ch. 51, L. 1993; amd. Sec. 1, Ch. 576, L. 1993.

80-11-207. Delivery of invoice — form — filing of sworn statement — payment of assessment — refund. (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase, delivery, or storage charge to the seller or person delivering the wheat or barley or entering it into storage. The invoices must be on forms approved by the department and must show:

(a) the name and address of the seller or of the person delivering the wheat or barley or entering it into storage;

(b) the name and address of the purchaser or the lender;

(c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, pledged, delivered, or stored;

(d) the date of the purchase, mortgage, pledge, delivery, or storage and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which a purchaser purchases wheat or barley or in which a lender makes a loan or advance on wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana, the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or liened as security for a loan during the preceding calendar month, or the number of bushels of wheat or hundredweights of barley delivered or stored. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat and barley account in the state special revenue fund.

(3) The statement referred to in subsections (1) and (2) must be legibly written and entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender under 80-11-206(2), the seller may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request must be accompanied by the original invoices received by the seller at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is made. All original invoices must be returned to the seller with the refund payment.

History: En. Sec. 13, Ch. 314, L. 1967; amd. Sec. 2, Ch. 201, L. 1971; amd. Sec. 112, Ch. 218, L. 1974; amd. Sec. 6, Ch. 71, L. 1975; R.C.M. 1947, 3-2913; amd. Sec. 43, Ch. 281, L. 1983; amd. Sec. 4, Ch. 48, L. 1987; amd. Sec. 10, Ch. 700, L. 1989; amd. Sec. 2, Ch. 576, L. 1993.

80-11-208. Receipt of gifts, grants, or donations for research purposes. The department may receive any gifts, grants, or donations for any research of scientific inquiries conducted under this part and may spend them in compliance with the conditions of the grants, gifts, and donations.

History: En. Sec. 15, Ch. 314, L. 1967; amd. Sec. 113, Ch. 218, L. 1974; R.C.M. 1947, 3-2915.

80-11-209. Official bonds of employees. Employees of the department participating in the handling of assessment receipts or other receipts shall be bonded for the faithful and safe handling and accounting for the receipts while in their hands and for faithful compliance with this part.

History: En. Sec. 16, Ch. 314, L. 1967; amd. Sec. 114, Ch. 218, L. 1974; R.C.M. 1947, 3-2916.

80-11-210. Wheat and barley account — sources — use — expenditures. (1) There shall be an account in the state special revenue fund known as the wheat and barley account. The following shall be placed in the account:

(a) the proceeds of all millage levies collected under this part; and

(b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat and barley account.

History: En. Sec. 17, Ch. 314, L. 1967; amd. Sec. 2, Ch. 70, L. 1973; amd. Sec. 115, Ch. 218, L. 1974; amd. Sec. 2, Ch. 16, L. 1977; R.C.M. 1947, 3-2917; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 5, Ch. 48, L. 1987; amd. Sec. 11, Ch. 700, L. 1989.

80-11-211. Violation — penalty. Any person violating any of the provisions of this part shall be guilty of a misdemeanor and shall upon conviction be fined not less than $25 or more than $500.

History: En. Sec. 19, Ch. 314, L. 1967; R.C.M. 1947, 3-2919.

80-11-212. Terminated. Sec. 6, Ch. 630, L. 1983.

History: En. Sec. 3, Ch. 630, L. 1983.

80-11-213 through 80-11-220 reserved.

80-11-221. Repealed. Sec. 2, Ch. 31, L. 1983.
History: En. Sec. 2, Ch. 530, L. 1979.

80-11-222. Repealed. Sec. 2, Ch. 31, L. 1983.
History: En. Sec. 3, Ch. 530, L. 1979; amd. Sec. 2, Ch. 615, L. 1981.

80-11-223. Repealed. Sec. 2, Ch. 31, L. 1983.
History: En. Sec. 4, Ch. 530, L. 1979.

80-11-224. Determination of amount and allocation of assessment. (1) The committee shall set the amount of the assessment each year in accordance with 80-11-206.

(2) Money deposited in the wheat and barley account pursuant to 80-11-210 is appropriated to the committee for purposes of carrying out research and marketing under this part.

(3) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of services supplied.
History: En. Sec. 1, Ch. 615, L. 1981; amd. Sec. 6, Ch. 48, L. 1987.

Part 3
Alfalfa Seed Industry

80-11-301. Short title. This part may be cited as the "Alfalfa Seed Industry Act".
History: En. Sec. 2, Ch. 405, L. 1981.

80-11-302. Findings — purpose. (1) The legislature finds that:

(a) it is in the best interest of all the people of Montana that the abundant natural resources of the state be protected, fully developed, and uniformly distributed;

(b) economic waste threatens the alfalfa seed industry in Montana because of lack of proper advertising and dissemination of information necessary for the development and promotion of alfalfa seed grown in the state and because of lack of facilities and funds for research to:

(i) develop and improve control measures for diseases and pests which attack alfalfa seed pollinators;

(ii) improve alfalfa seed growing culture; and

(iii) disseminate information to the growers; and

(c) it is in the interest of the people and general welfare of the state that this avoidable economic waste be eliminated by the growers having at their disposal all available information on the best and most advanced methods of culture, growing, harvesting, and marketing of alfalfa seed.

(2) The purpose of this part is to promote the general welfare of the people of the state by improving the culture and production of and expanding the market for alfalfa seed grown in the state.
History: En. Sec. 3, Ch. 405, L. 1981.

80-11-303. Definitions. As used in this part the following definitions apply:

(1) "Committee" means the Montana alfalfa seed committee established in 2-15-3004.

(2) "Dealer" means any person, partnership, association, corporation, cooperative, or other business unit or device that first handles, packs, ships, buys, and sells alfalfa seed or that acts as sales or purchasing agent, broker, or factor of alfalfa seed.

(3) "Grower" means any landowner personally engaged in growing alfalfa seed, a tenant personally engaged in growing alfalfa seed, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper, or any and all other business units, devices, and arrangements that grow alfalfa seed or are engaged in the pollination of alfalfa seed.

(4) "Handled in the primary channels of trade" means the time when any alfalfa seed is delivered under a sales contract, sold, or delivered for shipment and sale.

History: En. Sec. 4, Ch. 405, L. 1981.

80-11-304. Powers of the committee. The committee may:

(1) provide, through the department of agriculture, for the administration and enforcement of this part;

(2) enter into contracts in the name of the committee;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations required for the proper carrying out of the provisions of this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct a research program to improve the quality of alfalfa seed, develop and improve control measures for disease and pests which attack alfalfa and alfalfa seed pollinators, improve alfalfa growing culture, disseminate such information among the growers and dealers of the state, and make such research contracts and other agreements as may be necessary;

(6) plan and conduct a publicity and sales promotion campaign to increase the sale and use of Montana alfalfa seed and make such publicity and sales promotion contracts and other agreements as may be necessary;

(7) in cooperation with the director of the department of agriculture, establish and maintain the executive offices of the committee at any place within the state, which designated place may be changed at the discretion of the director and the committee;

(8) recommend rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with the Montana Administrative Procedure Act;

(9) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, engaged in work or activities similar to the work and activities of the committee and enter into contracts or agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, and reciprocal enforcement of these objectives; and

(10) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with this part, which may be specified as a condition of any grant, donation, or gift.

History: En. Sec. 5, Ch. 405, L. 1981.

80-11-305. Compensation — per diem. Each committee member is entitled to $25 compensation for each day he is engaged in the transaction of official business, together with actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 6, Ch. 405, L. 1981.

80-11-306. Repealed. Sec. 10, Ch. 220, L. 1995.

History: En. Sec. 7, Ch. 405, L. 1981.

80-11-307. Assessment on alfalfa seed. (1) There is hereby levied upon all alfalfa seed grown in this state and sold through commercial channels an assessment of 1/2 of 1% of the grower's price received at the point of first sale.

(2) If it appears from an investigation that the revenue from the assessment levied under subsection (1) is inadequate to accomplish the purposes of this part, the committee shall file with the director of agriculture a report showing the necessity of the industry, extent of public convenience, interest, and necessity, and probable revenue from the additional assessment desired to be levied. The director of agriculture may thereupon increase the assessment to a sum not to exceed 1% of the grower's price received at the point of first sale. No increase may be made prior to filing of the report and recommendation by the committee.

History: En. Sec. 8, Ch. 405, L. 1981.

80-11-308. Payment of assessment. All assessments levied and imposed under 80-11-307 must be paid to the department of agriculture by the person, either grower or dealer, by whom the alfalfa seed is first handled in the primary channels of trade and must be paid at such times as the department may by rule prescribe but not later than 60 days from the date on which the grower received payment for the alfalfa seed. If the party first handling the alfalfa seed in the primary channels of trade is a person other than the grower, he may charge against or recover from the grower of such alfalfa seed the full amount of any assessment levied and imposed under 80-11-307.

History: En. Sec. 9, Ch. 405, L. 1981.

80-11-309. Refund of assessment. Any person who has paid assessments to the department may request the department to refund all or any portion of the assessment levied under the rules of the department and paid by the producer. All such requests must be in writing, filed not later than August 1 of each calendar year for the preceding crop year, and must be on forms to be available without cost to all producers who pay assessments.

History: En. Sec. 10, Ch. 405, L. 1981.

80-11-310. Deposit and disbursement of funds — records — investment. (1) As soon as possible after receipt, all money received by the department from the assessment levied under 80-11-307 and all other money received must be deposited in the state special revenue fund.

(2) All money referred to in subsection (1) may be appropriated to the committee and may be used only for the payment of expenses incurred in

carrying out the provisions of this part. The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. The costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under 80-11-312, 80-11-313, and this section that is not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investment must be deposited in the alfalfa seed account in the state special revenue fund.

(4) Money received under 80-11-312, 80-11-313, and this section may be appropriated to the committee for the purposes of this part.

History: En. Sec. 11, Ch. 405, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 12, Ch. 700, L. 1989; amd. Sec. 2, Ch. 575, L. 1991; amd. Sec. 8, Ch. 220, L. 1995; amd. Sec. 71, Ch. 509, L. 1995.

80-11-311. Records required. Every dealer shall maintain accurate records of all alfalfa seed handled, packed, shipped, or processed by him. The records shall be in such form and contain such information as the department may by rule prescribe, shall be preserved for a period of 2 years, and are subject to inspection at any time upon request of the department or its agents.

History: En. Sec. 12, Ch. 405, L. 1981.

80-11-312. Penalty for nonpayment. Any grower or dealer who fails to make collection or pay any assessment within the time required pursuant to this part is subject to a penalty of 5% of the amount of the assessment determined to be due, as provided in this part, plus 1% of such amount for each month of delay or fraction thereof after the expiration of the month after such assessment became due. The penalty must be paid to the department and disposed of as provided in 80-11-310.

History: En. Sec. 13, Ch. 405, L. 1981.

80-11-313. Penalty. In addition to the penalty specified in 80-11-312, any person who violates or aids in a violation of any of the provisions of this part or any of the rules or orders of the department adopted under this part, upon conviction thereof, is punishable by a fine not to exceed $500. All fines collected, except fines collected by a justice's court, shall be deposited as provided in 80-11-310.

History: En. Sec. 14, Ch. 405, L. 1981; amd. Sec. 52, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4

Mint and Mint Oil Production

80-11-401. Findings — purpose. (1) The legislature finds that:

(a) It is in the best interest of the people of Montana that the abundant natural resources of the state be protected, fully developed, and uniformly distributed.

(b) Plant and pest diseases threaten the mint oil industry in Montana because of a lack of regulatory enforcement capability.

(c) It is in the interest of the people and to the benefit of the general welfare of the state that avoidable economic waste be eliminated as a result of mint growers having at their disposal all available information on the best and most advanced methods of culture, growing, and harvesting mint and controlling mint diseases and pests.

(2) The purpose of this part is to promote the general welfare of the people of Montana by:

(a) improving the culture and production of mint grown in this state;

(b) developing and improving control measures for diseases and pests that attack mint in order to maintain disease-free Montana mint; and

(c) disseminating appropriate information to Montana mint growers.

History: En. Sec. 2, Ch. 182, L. 1989.

80-11-402. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana mint committee established in 2-15-3006.

(2) "First purchaser" means a person, partnership, association, cooperative, or other business unit or device that first buys mint oil for subsequent sale or that acts as a sales or purchasing agent, broker, or factor of mint. The term includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against a grower, where the actual or constructive possession of mint oil is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.

(3) "Grower" means a landowner who is personally engaged in growing mint, a tenant who is personally engaged in growing mint, or both the landowner and tenant jointly, and includes a person, partnership, association, corporation, trust, sharecropper, or other business unit, device, or arrangement that grows mint.

(4) "Sale" means any pledge or mortgage of mint oil to any person, public or private.

History: En. Sec. 3, Ch. 182, L. 1989.

80-11-403. Powers of the committee. The committee may:

(1) provide for the administration and enforcement of this part;

(2) enter into contracts, in the name of the committee, to:

(a) improve the quality of mint;

(b) develop and improve control measures for diseases and pests that attack mint;

(c) improve mint growing culture;

(d) disseminate appropriate information among mint growers and dealers of the state; and

(e) carry out the purposes of this part;

(3) authorize the purchase of office equipment and supplies and incur other reasonable and necessary expenses and obligations required to carry out this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) adopt rules and orders for the exercise of its power and the performance of its duties in accordance with the Montana Administrative Procedure Act;

(6) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States, engaged in work or activities similar to the work and activities of the committee and enter into contracts with those organizations or agencies for conducting joint campaigns of research, education, disease control, product protection, and reciprocal enforcement of objectives;

(7) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with this part and spend the proceeds in compliance with the conditions of the grants, donations, and gifts; and

(8) establish by rule an integrated pest management program, complete with field scouting services. The purpose of the program is to identify, as early as possible, any potentially damaging diseases, weeds, or pests that could inhibit the long-term health of the Montana mint industry.

History: En. Sec. 4, Ch. 182, L. 1989; amd. Sec. 1, Ch. 62, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-11-404. Compensation — per diem. Each committee member is entitled to $25 compensation for each day he is engaged in the transaction of official business, together with actual and necessary travel expenses as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 5, Ch. 182, L. 1989.

80-11-405. Election of chairman — time of meetings. At the first meeting of the committee, it shall elect a chairman from among its members. The committee shall meet at least once annually and at such other times as called by the chairman or by any three members of the committee.

History: En. Sec. 6, Ch. 182, L. 1989.

80-11-406 through 80-11-410 reserved.

80-11-411. Repealed. Sec. 3, Ch. 62, L. 1993.

History: En. Sec. 7, Ch. 182, L. 1989.

80-11-412. Assessment on mint oil. (1) There is levied on all mint oil produced in this state and sold through normal commercial channels an assessment of not less than 5 cents or more than 15 cents a pound. The assessment is levied on each grower in the following manner:

(a) in the case of the sale of mint oil, the assessment must be collected by the first purchaser from the grower at the time of each settlement for mint oil purchased; or

(b) in the case of a pledge or mortgage of mint oil as security for a loan, the assessment must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan.

(2) The assessment must be deducted and collected whether the mint oil is stored in this state or any other state. The assessment is imposed on the initial sale, pledge, mortgage, or other transaction in which a grower parts with title to the mint oil or creates an interest in the mint oil in a pledgee, mortgagee, or other person, but a grower is not subject to assessment more than once

regardless of the number of times the oil is subject to a sale, pledge, mortgage, or other transaction.

(3) The committee shall by rule set the amount of the assessment annually in accordance with subsection (1).

History: En. Sec. 8, Ch. 182, L. 1989; amd. Sec. 2, Ch. 62, L. 1993.

80-11-413. Buyer's delivery of invoice to grower — form. The purchaser of mint oil at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give a separate invoice for each purchase to the grower. The invoice must be on forms approved by the committee and must contain:

(1) the name and address of the grower and seller;
(2) the name and address of the purchaser or the lender;
(3) the number of pounds of mint oil sold, mortgaged, or pledged;
(4) the date of purchase, mortgage, or pledge; and
(5) the amount of the assessment collected and remitted to the committee.

History: En. Sec. 9, Ch. 182, L. 1989.

80-11-414. Payment of assessment — sworn statement. (1) The purchaser, mortgagor, or pledgee shall file with the committee, on forms prescribed by the committee, within 20 days after the end of a month in which mint oil is purchased, a sworn statement of the number of pounds of mint oil purchased in Montana or the number of pounds of mint oil mortgaged, transferred, or otherwise subject to a lien as security for a loan during the preceding calendar month. At the time the statement is filed, the purchaser or lender shall pay to the committee the assessment provided for in 80-11-412 for deposit in the mint account in the state special revenue fund.

(2) The sworn statement referred to in subsection (1) must be legible and free of corrections and alterations.

History: En. Sec. 10, Ch. 182, L. 1989.

80-11-415. Mint account — sources — use — expenditures. (1) There is an account in the state special revenue fund, known as the mint account. The following must be placed in the account:

(a) the proceeds of all assessments collected under this part; and

(b) the proceeds from all grants, gifts, or donations to the committee for research authorized under this part.

(2) The account must be maintained for the purposes of this part and is separate from all other accounts of the department.

(3) The committee may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the mint account.

History: En. Sec. 11, Ch. 182, L. 1989.

Cross-References

Unified investment program, Title 17, ch. 6, part 2.

80-11-416. Records required. Every first purchaser of mint oil shall maintain accurate records of all mint oil handled, packed, shipped, or processed by him. The records must be in the form and contain the information the committee may by rule prescribe. The records must be preserved for 2 years and are subject to inspection at any time upon request of the committee or its agents.

History: **En. Sec. 12, Ch. 182, L. 1989.**

80-11-417. Mint oil purchaser license — application — fee. (1) Every person acting as a first purchaser shall annually file a written application with the committee for a license. The application must include:

(a) the applicant's name;

(b) the applicant's principal business addresses, both within and outside Montana;

(c) the name of a person authorized to receive service of summons and legal notices of all kinds for the applicant; and

(d) any other information the committee may require.

(2) Each application must be accompanied by a license fee of $50. A license is valid for the calendar year in which it is issued.

(3) A license must be issued if the committee is satisfied that the applicant is of good character and reputation and is financially responsible.

History: **En. Sec. 13, Ch. 182, L. 1989.**

80-11-418. Penalty for nonpayment of assessment. Any grower or first purchaser of mint oil who fails to make collection or pay an assessment within the time required pursuant to this part is subject to a penalty of 5% of the amount of the assessment determined to be due as provided in this part, plus 1% of that amount for each month of delay, or fraction thereof, after the expiration of the month after the assessment became due. The penalty must be paid to the committee and disposed of as provided in 80-11-415.

History: **En. Sec. 14, Ch. 182, L. 1989.**

80-11-419. Penalty. In addition to the penalty specified in 80-11-418, any person who violates or aids in the violation of any of the provisions of this part or any rules or orders of the committee adopted under this part is punishable upon conviction by a fine not to exceed $500. All fines collected must be deposited as provided in 80-11-415.

History: **En. Sec. 15, Ch. 182, L. 1989.**

CHAPTER 12

MONTANA AGRICULTURAL LOAN AUTHORITY ACT

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80-12-313. Refunding obligations — sale.
80-12-314. Refunding obligations — issuance.

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80-12-402. Repealed.
80-12-403. Repealed.

Chapter Cross-References

The Montana Unified Volume Cap Bond Allocation Plan Act, Title 17, ch. 5, part 13.

Agriculture development — investments, Title 90, ch. 9, part 3.

Agriculture marketing enhancement — export assistance, Title 90, ch. 9, part 4.

Part 1
General

80-12-101. Short title. This chapter may be cited as the "Montana Agricultural Loan Authority Act".

History: En. Sec. 2, Ch. 580, L. 1983.

80-12-102. Definitions. (1) As used in this chapter, the following definitions apply:

(a) "Agricultural land" means land actively devoted to agricultural use as defined in 15-7-202.

(b) "Authority" means the department of agriculture provided for in 2-15-3001.

(c) "Bonds" means bonds or bond anticipation notes issued by the authority under the provisions of this chapter.

(2) References to the authority's property, revenues, or assets apply only to property, revenues, and assets generated by the Montana agricultural loan authority program, not those owned or generated by any other program or property over which the authority exercises general authority, direction, and control.

History: En. Sec. 3, Ch. 580, L. 1983; amd. Sec. 4, Ch. 168, L. 1991.

80-12-103. Agricultural loan authority — general powers. The authority may:

(1) retain professional consultants and advisers;

(2) adopt rules governing its procedures;

(3) purchase agricultural loans made by financial institutions;

(4) issue bonds, in accordance with 80-12-301, necessary to provide funds for implementing this chapter;

(5) invest any funds generated by sale of bonds in the permissible investments outlined in 17-6-211 until such time as the funds are needed for any of the authority's other functions;

(6) procure insurance or guaranties in amounts and in the form the authority considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its loan agreements; and

(7) use the assistance and services of the farmers home administration, the production credit association, the federal land bank, or private lenders in approving loans for issuance of bonds.

History: En. Sec. 4, Ch. 580, L. 1983; amd. Sec. 1, Ch. 448, L. 1985.

80-12-104. Powers to be interpreted broadly. The powers enumerated in this chapter must be interpreted broadly to effectuate the purposes of the authority and may not be construed as a limitation of powers.

History: En. Sec. 27, Ch. 580, L. 1983.

Part 2
Loans

80-12-201. Loan agreements — general provisions. (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

(a) acquisition of farm or ranch land;

(b) a down payment on the acquisition of farm or ranch land; or

(c) acquisition or construction of depreciable property used in the operation of a farm or ranch.

History: En. Sec. 5, Ch. 580, L. 1983.

80-12-202. Immediate repayment. If an applicant who has obtained the approval of the authority for the issuance of a bond to fund his loan for the acquisition of farm or ranch land sells the land for which the loan was made to any person, firm, or corporation other than his spouse, children, or corporation wholly owned by them, the loan must be repaid in full.

History: En. Sec. 6, Ch. 580, L. 1983.

80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant must:

(a) declare his intention to maintain his residence in Montana during the length of the loan;

(b) have been approved by a financial institution; and

(c) have a net worth not to exceed $250,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in 35-1-113, may not apply.

History: En. Sec. 7, Ch. 580, L. 1983; amd. Sec. 1, Ch. 542, L. 1985; amd. Sec. 214, Ch. 368, L. 1991.

80-12-204. Evaluation of applicants. (1) The authority shall by rule establish:

(a) procedures and standards for evaluating applications for loans to be approved by the authority for issuance of bonds; and

(b) a system for evaluating the applicants, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's access to livestock and machinery;

(iii) the applicant's training and experience in agriculture;

(iv) the applicant's prospects for succeeding in an agricultural operation on the land proposed for purchase; and

(v) any other factors it may prescribe.

(2) The authority shall select the best qualified and most deserving applicants from among those applying for approval of loans for issuance of bonds.

(3) The authority may seek the advice of such lenders as the farmers home administration, the production credit association, the federal land bank, private lenders, or similar organizations in Montana and coordinate its program through these organizations.

History: En. Sec. 8, Ch. 580, L. 1983; amd. Sec. 2, Ch. 542, L. 1985.

80-12-205. Purchase of loans. The authority may purchase loans and make advance commitments to purchase loans from a financial institution at prices and upon terms and conditions established pursuant to 80-12-201 through 80-12-204 and rules promulgated by the authority.

History: En. Sec. 9, Ch. 580, L. 1983.

80-12-206 through 80-12-210 reserved.

80-12-211. Income tax deduction for land sale to beginning farmers. A landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in his taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of $50,000, provided the transaction is approved by the authority for this purpose.

History: En. Sec. 23, Ch. 580, L. 1983; amd. Sec. 4, Ch. 542, L. 1985.

80-12-212 through 80-12-214 reserved.

80-12-215. Loan guaranty program. (1) The authority may guarantee and make commitments to guarantee payment required by a loan funded under this chapter or any other agricultural loan for which a guaranty has been approved by the authority upon such terms and conditions as the authority may prescribe in accordance with this chapter. In administering the guaranty program, the authority may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, and guidelines.

(2) Guaranties by the authority under this chapter must:

(a) be made for a loan that the authority finds meets the policies and objectives of this chapter;

(b) be made to an applicant for a guaranty approved by the authority;

(c) contain amortization provisions satisfactory to the authority; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes, assessments, delinquency charges, and default remedies as the authority determines to be necessary.

(3) The authority is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the agricultural loan guaranty fund and any guaranteed loan or other credit agreement. Such an agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under this chapter.

(4) Any contract of guaranty made by the authority under the authorization of this chapter must provide that claims payable thereunder must be paid from amounts available in the agricultural loan guaranty fund and from amounts available under the terms of any applicable contract or agreement with the financial institution that originated the guaranteed loan. The obligation of the authority to make payments under such a contract is limited solely to such sources and does not constitute a debt or liability of the state. A guaranty contract and any rule or guideline of the authority implementing the guaranty program may contain such other terms, provisions, or conditions as the authority considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of this chapter may be determined on such basis and be payable by such person in such amounts and at such times as the authority determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

History: **En. Sec. 2, Ch. 448, L. 1985.**

80-12-216. Agricultural loan guaranty fund. (1) The authority shall create an agricultural loan guaranty fund. The fund must be held by a trustee or other fiduciary designated by the authority. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the authority considers necessary to comply with any contract or agreement entered into by the authority under this chapter. The authority may borrow from and deposit in the agricultural loan guaranty fund up to $20,000,000 from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the authority in accordance with guaranty contracts with financial institutions entered into pursuant to this chapter, including without limitation the protection of the interest of the authority in loans during periods of delinquency or upon default.

(3) The minimum reserve requirement for the agricultural loan guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under this chapter, but not in excess of the aggregate annual payments due under the loans or other credit agreements guaranteed by the authority. No loan or other credit agreement may be guaranteed by the authority if the amount of money available in the agricultural loan guaranty fund would be less than the minimum reserve requirement.

(4) In order to assure the maintenance of the agricultural loan guaranty fund, the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the agricultural loan guaranty fund to the minimum reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the agricultural loan guaranty fund to the minimum reserve requirement. Nothing contained herein shall obligate the legislature to make an appropriation for this purpose.

(5) All amounts remitted to the authority under this section constitute loans to the authority and must be repaid to the state treasury without interest from available operating revenues of the authority in excess of amounts required for the guarantee of loans.

History: En. Sec. 3, Ch. 448, L. 1985.

Part 3

Bonds

80-12-301. Issuance of bonds — credit of the state not pledged. (1) The authority may issue bonds of the state of Montana in a principal amount it determines necessary to provide sufficient funds for achieving any of the purposes of the Montana agricultural loan authority program, including the payment of interest on bonds, establishment of reserves to secure the bonds, and all other expenditures of the authority incident to the program.

(2) Each issue of its bonds is an obligation of the authority, payable out of any revenues, assets, or money generated by the Montana agricultural loan authority program. The authority shall manage its loans so that the bonds are repaid by the revenue generated by the program. The full faith and credit and

taxing powers of the state are not pledged for the payment of bonds issued by the authority under the provisions of this chapter.

(3) The bonds must be authorized by resolution of the authority, bear a date, and mature at times the authority determines. A bond may not mature more than 60 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The bonds of the authority may be sold at public or private sale, at prices determined by the authority.

(4) The resolution shall specify:

(a) the rate of interest of the bonds;

(b) the denomination of the bonds;

(c) whether the bonds shall be in coupon or registered form and registration privileges, if any;

(d) the manner and place of execution;

(e) the manner, place, and medium of payment; and

(f) the terms of redemption.

(5) The total amount of bonds outstanding at any one time may not exceed $40 million.

History: En. Sec. 10, Ch. 580, L. 1983; amd. Sec. 3, Ch. 542, L. 1985.

80-12-302. Provisions of bond resolutions or trust indentures. A resolution or trust indenture authorizing any bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or the property of the authority to secure the payment of the bonds or any issue thereof, subject to existing agreements with bondholders;

(2) pledging all or any part of the assets of the authority, including mortgages and obligations securing them, to secure the payment of the bonds;

(3) specifying the use and disposition of the gross income from mortgages owned by the authority and payment of principal of mortgages owned by the authority;

(4) the setting aside of reserves or sinking funds in the hands of trustees, paying agents, or other depositories and the regulation and disposition of the reserves;

(5) limiting the purpose to which the proceeds of the sale of the bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(7) specifying the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) limiting the amount of money to be expended by the authority for its operating expenses;

(9) vesting in a trustee, as the authority determines, property, rights, powers, and duties in trust;

(10) defining the acts or failures to act that will constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies, consistent with the laws of the state and the provisions of this chapter, of the bondholders if a default occurs, including as a matter of right the appointment of a receiver; and

(11) specifying any other matters that in any way affect the security or protection of the bondholders.

History: **En. Sec. 11, Ch. 580, L. 1983.**

80-12-303. Trust indenture. In the discretion of the authority, the bonds may be secured by a trust indenture between the authority and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state.

History: **En. Sec. 15, Ch. 580, L. 1983.**

80-12-304. Negotiability of bonds. Bonds issued by the authority are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: **En. Sec. 16, Ch. 580, L. 1983.**

80-12-305. Tax exemption of bonds. Bonds issued by the authority under this chapter and their transfer and income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The authority is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: **En. Sec. 22, Ch. 580, L. 1983.**

80-12-306. Purchase of bonds — cancellation. The authority, subject to existing agreements with bondholders, may from any funds available for that purpose purchase bonds of the authority, which shall thereupon be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment thereon, if the bonds are then redeemable; or

(2) the redemption price applicable on the first date after purchase upon which the bonds become subject to redemption plus accrued interest to that date, if the bonds are not then redeemable.

History: **En. Sec. 14, Ch. 580, L. 1983.**

80-12-307. Pledge against impairment of contracts. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will in no way impair the obligations of any agreement between the authority and the holders of notes and bonds issued by the authority.

History: **En. Sec. 24, Ch. 580, L. 1983.**

80-12-308. Validity of pledge. A pledge made by the authority is valid and binding from the time the pledge is made. The revenues or property pledged and thereafter received by the authority is immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. The resolution, trust indenture, or any other instrument by which a pledge is created need not be recorded.

History: **En. Sec. 12, Ch. 580, L. 1983.**

80-12-309. Personal liability. The authority members and department members are not personally liable for any debt incurred by the authority.

History: **En. Sec. 13, Ch. 580, L. 1983.**

80-12-310. Continuing validity of authority members' signatures. If any authority member whose signature appears on bonds or coupons ceases to be a member before the delivery of the bonds, his signature continues to be valid and sufficient for all purposes.

History: **En. Sec. 17, Ch. 580, L. 1983.**

80-12-311. Accounts of the authority. There is an agricultural loan authority enterprise fund in the enterprise fund type provided for in 17-2-102. All funds from the proceeds of bonds issued under this chapter, fees and other money received by the authority, money appropriated by the legislature for the use of the authority in administering this chapter, and money made available from any other source for the use of the authority must be deposited in the agricultural loan authority enterprise fund except as otherwise provided by law. All funds deposited in the agricultural loan authority enterprise fund are continuously appropriated to and may be expended by the authority for the purposes authorized in this chapter.

History: **En. Sec. 18, Ch. 580, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

80-12-312. Reserve funds and appropriations. (1) The authority shall pay into one or more capital reserve accounts any:

(a) money appropriated and made available by the state for the purpose of the fund;

(b) proceeds of sale of bonds to the extent provided in the resolutions of the authority authorizing their issuance or in any trust indenture securing their repayment; and

(c) other money that may be available to the authority for the purpose of such a fund from any other source.

(2) All amounts held in a capital reserve account must be used solely for the payment of principal, interest, and a redemption premium with respect to bonds secured in whole or in part by the account. Funds in an account may not be withdrawn at any time in an amount that reduces the amount of the account to less than the minimum capital reserve requirement established for the account except for the purpose, with respect to bonds secured in whole or in part by the account, of making payment, when due, of principal, interest, or redemption premiums for the payment of which other money pledged is not available.

History: **En. Sec. 19, Ch. 580, L. 1983.**

80-12-313. Refunding obligations — sale. Refunding obligations issued as provided in 90-6-121 may be sold or exchanged for outstanding obligations issued under this chapter. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds to the payment of outstanding obligations, the proceeds may be invested as provided in Title 17, chapter 6, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them.

History: **En. Sec. 20, Ch. 580, L. 1983.**

80-12-314. Refunding obligations — issuance. The authority may provide for the issuance of refunding obligations to refund any obligations then outstanding that have been issued under this chapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of this chapter that relate to the issuance of obligations.

History: En. Sec. 21, Ch. 580, L. 1983.

Part 4
Oversight
(Repealed)

80-12-401. Repealed. Sec. 1, Ch. 39, L. 1991.

History: En. Sec. 25, Ch. 580, L. 1983.

80-12-402. Repealed. Sec. 56, Ch. 349, L. 1993.

History: En. Sec. 26, Ch. 580, L. 1983; amd. Sec. 55, Ch. 112, L. 1991.

80-12-403. Repealed. Sec. 56, Ch. 349, L. 1993.

History: En. Sec. 28, Ch. 580, L. 1983.

CHAPTER 13
AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM
(Repealed. Sec. 1, Ch. 190, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

80-13-101. En. Sec. 1, Ch. 9, Sp. L. March 1986; amd. Sec. 1, Ch. 605, L. 1987.

80-13-102. En. Sec. 2, Ch. 9, Sp. L. March 1986; amd. Sec. 1, Ch. 481, L. 1987; amd. Sec. 2, Ch. 605, L. 1987; amd. Sec. 1, Ch. 269, L. 1989.

80-13-103. En. Sec. 3, Ch. 9, Sp. L. March 1986; amd. Sec. 3, Ch. 605, L. 1987; amd. Sec. 2, Ch. 269, L. 1989.

80-13-104. En. Sec. 4, Ch. 9, Sp. L. March 1986; amd. Sec. 4, Ch. 605, L. 1987; (4)En. Sec. 6, Ch. 605, L. 1987; amd. Sec. 3, Ch. 269, L. 1989.

80-13-105 through 80-13-110 reserved.

80-13-111. En. Sec. 5, Ch. 9, Sp. L. March 1986; amd. Sec. 5, Ch. 605, L. 1987.

80-13-201. En. Sec. 6, Ch. 9, Sp. L. March 1986.

80-13-202. En. Sec. 7, Ch. 9, Sp. L. March 1986.

80-13-203. En. Sec. 8, Ch. 9, Sp. L. March 1986.

80-13-204. En. Sec. 9, Ch. 9, Sp. L. March 1986.

80-13-205 through 80-13-210 reserved.

80-13-211. En. Sec. 10, Ch. 9, Sp. L. March 1986.

80-13-212. En. Sec. 11, Ch. 9, Sp. L. March 1986.

80-13-213. En. Sec. 12, Ch. 9, Sp. L. March 1986.

80-13-214. En. Sec. 2, Ch. 481, L. 1987.

CHAPTER 14

PRODUCTION LOAN LINKED DEPOSIT PROGRAM

(Terminated. Sec. 5, Ch. 57, L. 1987)

Chapter Compiler's Comments

Histories of Terminated Sections:

80-14-101. En. Sec. 1, Ch. 5, Sp. L. March 1986.

80-14-102. En. Sec. 2, Ch. 5, Sp. L. March 1986; amd. Sec. 1, Ch. 57, L. 1987; amd. Sec. 14, Ch. 581, L. 1987.

80-14-103. En. Sec. 3, Ch. 5, Sp. L. March 1986.

80-14-201. En. Sec. 4, Ch. 5, Sp. L. March 1986.

80-14-202. En. Sec. 5, Ch. 5, Sp. L. March 1986; amd. Sec. 2, Ch. 57, L. 1987.

80-14-203. En. Sec. 6, Ch. 5, Sp. L. March 1986; amd. Sec. 3, Ch. 57, L. 1987.

80-14-204. En. Sec. 7, Ch. 5, Sp. L. March 1986.

80-14-205. En. Sec. 8, Ch. 5, Sp. L. March 1986.

CHAPTER 15

MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT

Part 1 — General Provisions

80-15-101. Short title.
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80-15-103. Policy.
80-15-104. Administration.
80-15-105. Rulemaking.
80-15-106. Educational programs.
80-15-107. Research.
80-15-108. Confidentiality.
80-15-109 reserved.
80-15-110. State regulations no more stringent than federal regulations or guidelines.

Part 2 — Control

80-15-201. Ground water standards.
80-15-202. Monitoring programs.
80-15-203. Evaluation and use of monitoring results.
80-15-204 through 80-15-210 reserved.
80-15-211. General agricultural chemical ground water management plan.
80-15-212. Specific agricultural chemical ground water management plans.
80-15-213. Beneficial use to be considered in developing management plans — water classification.
80-15-214. Contents of specific agricultural chemical ground water management plan.
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80-15-216. Commercial fertilizer ground water management plan.
80-15-217. Management plans — rulemaking — review.
80-15-218. Notice to buyer.
80-15-219. Repealed.

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80-15-414. Criminal penalties.

Chapter Cross-References

Environmental policy and protection generally, Title 75, ch. 1.

Water quality, Title 75, ch. 5.

Pesticides, Title 80, ch. 8.

Commercial fertilizers, Title 80, ch. 10.

Part 1

General Provisions

80-15-101. Short title. This chapter may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

History: En. Sec. 1, Ch. 668, L. 1989.

80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department, in consultation with the Montana state university-Bozeman extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from human activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of environmental quality to implement the provisions of this chapter.

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by 80-15-201.

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of humans or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation.

History: En. Sec. 2, Ch. 668, L. 1989; amd. Sec. 331, Ch. 418, L. 1995; amd. Secs. 547, 568, Ch. 546, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

80-15-103. Policy. It is the public policy of this state to:

(1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;

(2) allow for the proper and correct use of agricultural chemicals;

(3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water; and

(4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

History: En. Sec. 3, Ch. 668, L. 1989.

80-15-104. Administration. (1) The department and the department of environmental quality shall administer this chapter.

(2) The department of environmental quality is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, providing comments to the department during the development of agricultural chemical ground water management plans, promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218, 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) This chapter does not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of this chapter, including rulemaking and hearing functions authorized by this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4.

History: En. Sec. 4, Ch. 668, L. 1989; amd. Sec. 332, Ch. 418, L. 1995.

80-15-105. Rulemaking. (1) The board, subject to the provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the board and the department of environmental quality have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412.

History: En. Sec. 5, Ch. 668, L. 1989; amd. Sec. 333, Ch. 418, L. 1995; amd. Sec. 20, Ch. 471, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

80-15-106. Educational programs. (1) The department, in cooperation with the Montana state university-Bozeman extension service, shall develop and conduct appropriate educational programs to promote the policy specified in 80-15-103. The department and the Montana state university-Bozeman extension service may charge a fee for the educational programs, commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university-Bozeman extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

History: En. Sec. 6, Ch. 668, L. 1989; amd. sec. 36, Ch. 308, L. 1995.

80-15-107. Research. The department or the department of environmental quality shall promote, for the purposes described in 80-15-103, cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

History: En. Sec. 7, Ch. 668, L. 1989; amd. Sec. 334, Ch. 418, L. 1995.

80-15-108. Confidentiality. (1) The department and the department of environmental quality shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of environmental quality shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

History: En. Sec. 8, Ch. 668, L. 1989; amd. Sec. 335, Ch. 418, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

80-15-109 reserved.

80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 2
Control

80-15-201. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the board shall adopt an interim numerical standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The board shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6.

History: En. Sec. 9, Ch. 668, L. 1989; amd. Sec. 336, Ch. 418, L. 1995.

80-15-202. Monitoring programs. (1) The department or the department of environmental quality shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) The department and the department of environmental quality shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes.

History: En. Sec. 10, Ch. 668, L. 1989; amd. Sec. 5, Ch. 189, L. 1995; amd. Sec. 337, Ch. 418, L. 1995.

80-15-203. Evaluation and use of monitoring results. (1) When providing preliminary monitoring results or confirmed monitoring results to ground water users or the public, the department and the department of environmental quality shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of environmental quality is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of environmental quality shall cooperatively evaluate the results of monitoring programs authorized by 80-15-202.

(4) Based on the results of monitoring, the department and the department of environmental quality shall implement appropriate actions

specified in this chapter to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by this chapter and the department of environmental quality may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5;

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water.

History: En. Sec. 11, Ch. 668, L. 1989; amd. Sec. 338, Ch. 418, L. 1995.

80-15-204 through 80-15-210 reserved.

80-15-211. General agricultural chemical ground water management plan. The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of 80-15-103. This plan must include general program elements set forth in this chapter and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of environmental quality to prepare and submit comments on the plan.

History: En. Sec. 12(1), Ch. 668, L. 1989; amd. Sec. 339, Ch. 418, L. 1995.

80-15-212. Specific agricultural chemical ground water management plans. (1) Except as provided in 80-15-216, the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(c) when agricultural chemicals have been determined to have migrated in the ground water from the point of detection;

(d) when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

(e) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(2) Any person using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical region that is addressed by the plan shall comply with the plan. The department may specifically identify and designate persons who are under the plan and may inform any person about the plan.

(3) The department shall prioritize preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources.

History: En. Sec. 12(2) thru (4), Ch. 668, L. 1989.

80-15-213. Beneficial use to be considered in developing management plans — water classification. (1) (a) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until the ground water is classified by the department of environmental quality; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as required by 80-15-212(1).

(2) The department may request the department of environmental quality to classify certain ground water and may collect the data and information required by the department of environmental quality to classify the ground water. If adequate technical data and financial resources are available as determined by the department of environmental quality, the department of environmental quality shall classify ground water at locations as requested by the department.

History: En. Sec. 12(5), (6), Ch. 668, L. 1989; amd. Sec. 340, Ch. 418, L. 1995.

80-15-214. Contents of specific agricultural chemical ground water management plan. (1) A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

(b) requirements to prevent or minimize further presence of the agricultural chemical in the ground water and to provide protection for the present and future beneficial use of the ground water.

(2) A specific agricultural chemical ground water management plan may include but is not limited to the following elements:

(a) identification of geographical areas where an agricultural chemical may be used;

(b) ground water, soil, meteorological, and geological characteristics;

(c) best management plans and best management practices;

(d) identification of high-priority ground water;

(e) certification, licensing, training, and education requirements for persons using agricultural chemicals;

(f) identification of setback areas around water wells where certain activities may be restricted;

(g) agricultural chemical application rates and timing and related use criteria;

(h) alternative pest management techniques, including integrated pest management;

(i) other requirements for pesticides, as set forth in Title 80, chapter 8, and related rules, and for fertilizers, as set forth in Title 80, chapter 10, and related rules;

(j) EPA requirements; and

(k) alternative soil fertility practices.

History: En. Sec. 12(7), (8), Ch. 668, L. 1989.

80-15-215. Benefits of appropriate agricultural chemical use to be considered. (1) When developing and implementing a specific agricultural chemical ground water management plan, the department shall consider the benefits of appropriate use of the agricultural chemical and shall consult with the Montana state university-Bozeman extension service.

(2) Within available resources, the department shall contact users of an agricultural chemical and user groups that will be subject to a general or specific agricultural chemical ground water management plan to request their recommendations concerning the development of the plan.

History: En. Sec. 12(9), (10), Ch. 668, L. 1989; amd. sec. 36, Ch. 308, L. 1995.

80-15-216. Commercial fertilizer ground water management plan. The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of environmental quality determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers.

History: En. Sec. 12(11), Ch. 668, L. 1989; amd. Sec. 341, Ch. 418, L. 1995.

80-15-217. Management plans — rulemaking — review. (1) The department shall adopt specific agricultural chemical ground water management plans through rulemaking; however, the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of environmental quality a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of environmental quality to prepare comments on the plan.

(2) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

History: En. Sec. 12(12), (13), Ch. 668, L. 1989; amd. Sec. 342, Ch. 418, L. 1995.

80-15-218. Notice to buyer. A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about his obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this section.

History: En. Sec. 12(14), Ch. 668, L. 1989.

80-15-219. Repealed. Sec. 500, Ch. 418, L. 1995.
History: En. Sec. 13, Ch. 668, L. 1989.

Part 3
Funding

80-15-301. Agricultural chemical ground water protection accounts — acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of environmental quality agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of environmental quality may individually or jointly spend funds received by their respective accounts for the purposes authorized by this chapter.

History: En. Sec. 14, Ch. 668, L. 1989; amd. Sec. 343, Ch. 418, L. 1995.

80-15-302. Special funding. (1) A fee of $80 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of environmental quality; and

(ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department.

History: En. Sec. 15, Ch. 668, L. 1989; amd. Sec. 5, Ch. 588, L. 1991; amd. Sec. 344, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

Part 4
Enforcement

80-15-401. Authority to investigate and inspect. Authorized representatives of the department, consistent with the responsibilities set forth in this chapter and upon presentation of department-issued credentials, may at reasonable times or under emergency conditions enter upon any public or private property to:

(1) investigate conditions relating to compliance with agricultural chemical labels, agricultural chemical ground water management plans, monitoring requirements, or ground water protection requirements and to investigate violations of plans or compliance orders;

(2) gain access to and copy any records required by the department in the administration of this chapter;

(3) establish and inspect monitoring equipment; and

(4) sample ground water, including drinking water supply sources such as wells and similar structures.

History: En. Sec. 16, Ch. 668, L. 1989.

80-15-402. Prohibited activity. It is unlawful for a person to:

(1) violate any provision of a specific agricultural chemical ground water management plan;

(2) violate any lawful order issued pursuant to this chapter; or

(3) violate any provision of this chapter.

History: En. Sec. 17, Ch. 668, L. 1989.

80-15-403. Compliance orders. (1) In furtherance of 80-15-402, the department may issue a compliance order to a person who violates a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of environmental quality pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) (a) The department may issue a compliance order to a person who violates any requirement established pursuant to this chapter. This subsection does not apply:

(i) to commercial wood treatment facilities; or

(ii) when agricultural chemicals have caused or are likely to cause contamination of a public water supply system, as defined in 75-6-102.

(b) The provisions of this subsection (2) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either

personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. Sec. 18, Ch. 668, L. 1989; amd. Sec. 6, Ch. 189, L. 1995; amd. Sec. 1, Ch. 192, L. 1995; amd. Sec. 345, Ch. 418, L. 1995.

80-15-404. Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under 80-15-403.

History: En. Sec. 19, Ch. 668, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

80-15-405. Emergencies. Notwithstanding any other provisions of this chapter, if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural chemicals or to prevent use of ground water impaired or likely to be impaired by agricultural chemicals, the department may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare, and safety. The duration of an emergency order or rule is limited to the emergency provisions of the Montana Administrative Procedure Act as specified in 2-4-303.

History: En. Sec. 20, Ch. 668, L. 1989.

80-15-406 through 80-15-410 reserved.

80-15-411. Violators subject to penalties. (1) A person found to be in violation of this chapter or a rule established pursuant to this chapter is subject to the penalty provisions of 80-15-412 through 80-15-414.

(2) For the purpose of this section, the term "person" means, in addition to the definition in 80-15-102, any responsible corporate officer.

(3) Nothing in this chapter may be construed as requiring the department or an authorized agent of the department to report minor violations of this chapter for prosecution when the department or an authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

(5) The department and the department of environmental quality shall coordinate actions when a violator is subject to the penalties authorized by 80-15-412 through 80-15-414 and to the penalties authorized by Title 75, chapter 5, for the same violation.

History: En. Sec. 21, Ch. 668, L. 1989; amd. Sec. 346, Ch. 418, L. 1995.

80-15-412. Administrative civil penalty. (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by the department of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by this chapter or Title 75, chapter 5, that is issued or undertaken by either the department or the department of environmental quality.

(2) An administrative civil penalty may not be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

History: En. Sec. 22, Ch. 668, L. 1989; amd. Sec. 7, Ch. 189, L. 1995; amd. Sec. 347, Ch. 418, L. 1995.

80-15-413. Judicial civil penalty. A person who commits a violation as specified in 80-15-402 shall be subject to a judicial civil penalty not to exceed $10,000. Each occurrence constitutes a separate violation.

History: En. Sec. 23, Ch. 668, L. 1989.

80-15-414. Criminal penalties. (1) A person who intentionally commits a violation as specified in 80-15-402 is guilty of an offense and subject to a fine not to exceed $25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than $50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

(2) Except as otherwise provided in this chapter, a person convicted of violating any of the provisions of this chapter or rules issued under this chapter or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall, upon conviction, be punished by a fine of not more than $5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under this chapter or rules issued under this chapter shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than 1 year, or both.

History: En. Sec. 24, Ch. 668, L. 1989.

TITLE 81

LIVESTOCK

Ch.
1. Department of Livestock.
2. Disease Control.
3. Marks and Brands.
4. Containment of Livestock.
5. Unlawful Transporting or Driving of Livestock.
6. Livestock Protective Associations.
7. Predatory Animal Control.
8. Marketing.
9. Slaughter.

Chapters 10 through 19 reserved.

20. Poultry and Eggs.
21. Dairy Products.
22. Manufactured Dairy Products.
23. Milk Price Control.

Chapters 24 through 29 reserved.

30. Protection of Farm Animals and Research Facilities.

Title Cross-References

Board of Horseracing, 2-15-1881.

Water Pollution Control Advisory Council, 2-15-2107.

Creation and Composition of Board of Livestock, 2-15-3102.

Rangeland Resources Committee, 2-15-3305.

Fish, Wildlife, and Parks Commission — one member to be person experienced with livestock, 2-15-3402.

Consideration of livestock districts in city-county consolidation, 7-3-1101.

State policy for resource management, 7-8-2701.

Water district powers — consideration of livestock water supply, 7-13-2218.

Business, agricultural, and livestock services and regulation, Title 7, ch. 21.

County license fees — deposit of percentage in revenue fund for predatory animal control, 7-21-2105.

County funding for extension work, 7-21-3203.

County funding for employment of livestock inspector, 7-21-3211.

Control of feed in emergency, 10-3-505.

Tax provisions relating to livestock, 15-1-101; 15-6-136; 15-6-207; 15-7-202; 15-8-201; 15-24-301; 15-24-302; Title 15, ch. 24, part 9; 15-30-201.

Individual income tax provisions relating to livestock — definitions, 15-30-201.

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Experimental facilities, 20-25-222 through 20-25-232.

Study of relationship between forest and pasturage, 20-25-242.

Power of Montana University System Regents to aid development of facilities for livestock breeding, development, and exhibition, 20-25-302.

Preservation of animals — duties of trustees of Montana Historical Society, 22-3-107.

Horseracing, Title 23, ch. 4.

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Action to recover stock sold for delinquent assessment — Statute of limitations, 27-2-210.

Unborn young of animals as "goods" under Uniform Commercial Code, 30-2-105.

Warranties in sale of animals under Uniform Commercial Code, 30-2-316.

Cattle sales under Uniform Commercial Code, 30-2-401.

Manner of identification of goods — unborn young of animals under Uniform Commercial Code, 30-2-501.

Debtor's interest in unborn young of animals, 30-9-204.

Financing or continuation statement — computerized farm statement system, 30-9-403.

Registration of farm and ranch name, 30-13-112.

Unlawful to destroy or withhold food for human consumption, 30-14-217.

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Farm mutual insurers, Title 33, ch. 4.

Farm mutual insurance on livestock, 33-4-501.

Veterinary medicine and technology, Title 37, ch. 18.

Wage provisions pertaining to livestock business, 39-3-404 through 39-3-406.

Unemployment compensation provisions relating to livestock, Title 39, ch. 51, part 2.

Unemployment insurance provisions pertaining to livestock business, 39-51-205.

Failure to close stock gate as criminal mischief, 45-6-101.

Theft of domestic hooved animal — penalty, 45-6-301.

Animal fights prohibited — penalty, 45-8-210.

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Unlawful to damage livestock used in mining, 50-73-305.

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Special fees — livestock hauling vehicles — certain farm vehicles, 61-10-206.

Necessary livestock caretakers — train travel free or at reduced rates, 69-11-208.

Liability of railroads for killing or injuring stock, Title 69, ch. 14, part 7.

Transportation and protection of livestock by railroads, Title 69, ch. 14, part 7; 69-14-801.

Farm laborers' liens, Title 71, ch. 3, part 4.

Agisters' liens, Title 71, ch. 3, part 12.

Lien for rental on frozen food compartments, 71-3-1505.

Pollution defined as affecting livestock, 75-6-102.

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Effect of designation or acquisition of "natural area", 76-12-111.

Rangeland resources management, Title 76, ch. 14.

Restriction of numbers of grazing livestock as soil conservation, 76-15-101.

Grazing districts, Title 76, ch. 16.

Selection and location of state lands granted by United States — water available for livestock, 77-1-304.

Agricultural and grazing leases, Title 77, ch. 6.

Lease conditions — state grazing lands, 77-6-113.

Formula for fixing annual rental of state grazing lands, 77-6-507.

Mine reclamation — restoration of land and protection of livestock, 82-4-202, 82-4-231, 82-4-233, 82-4-336, 82-4-434.

Powder River Basin — filing claims for existing water rights for livestock, 85-2-222.

No permit required for certain appropriations of water for livestock, 85-2-306.

Standards for fresh water — fit for livestock use, 85-2-504.

Ground water control — corrective control provisions — livestock priority, 85-2-507.

Water conservancy districts — consideration of livestock water supply, 85-9-102.

Use of livestock by archers during special archery seasons — rules by Fish, Wildlife, and Parks Commission, 87-1-304.

CHAPTER 1

DEPARTMENT OF LIVESTOCK

Part 1 — General Provisions

81-1-101. Definitions.
81-1-102. Duties and powers of department — fees based on costs.
81-1-103. Audit of bills — payment of expenses.
81-1-104. Investment of state special revenue account funds — crediting of investment income.
81-1-105. Terminated.

Part 2 — Inspectors and Detectives

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81-1-202. Duties.
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81-1-204. Assignment to districts.

Part 3 — Administration of Animal Health Laws

81-1-301. Administrator — appointment and qualifications.
81-1-302. Duties of administrator.
81-1-303. Administrator's expertise to be considered.
81-1-304. Appointment of federal veterinary inspectors.

Part 4 — Rodent Control
(Renumbered. Sec. 4, Ch. 65, L. 1983)

Chapter Cross-References

Special levies for livestock, Art. XII, sec. 1, Mont. Const.

State control of access, ingress, and egress to and through land ceded to United States by persons owning or controlling livestock, 2-1-202, 2-1-209.

Creation of Department of Livestock, 2-15-3101.

Creation and composition of Board of Livestock, 2-15-3102.

Part 1
General Provisions

81-1-101. Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

History: En. 46-103.1 by Sec. 48, Ch. 310, L. 1974; R.C.M. 1947, 46-103.1.

81-1-102. Duties and powers of department — fees based on costs. (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) The department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

(3) The department shall perform the duties assigned to the department relating to the administration and regulation of game farms as described in Title 87, chapter 4, part 4.

History: En. Sec. 4, Ch. 51, L. 1917; re-en. Sec. 3256, R.C.M. 1921; re-en. Sec. 3256, R.C.M. 1935; amd. Sec. 49, Ch. 310, L. 1974; amd. Sec. 52, Ch. 359, L. 1977; R.C.M. 1947, 46-104; amd. Sec. 4, Ch. 444, L. 1983; amd. Sec. 1, Ch. 503, L. 1995.

Cross-References

Subpoenas in administrative proceedings, 2-4-104.

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Subpoenas generally, Title 26, ch. 2, part 1.

Department of Agriculture to promote livestock shows, 80-1-102.

81-1-103. Audit of bills — payment of expenses. The department shall audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the department's moneys in the state special revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R.C.M. 1921; re-en. Sec. 3257, R.C.M. 1935; amd. Sec. 88, Ch. 147, L. 1963; amd. Sec. 50, Ch. 310, L. 1974; R.C.M. 1947, 46-105; amd. Sec. 1, Ch. 277, L. 1983.

81-1-104. Investment of state special revenue account funds — crediting of investment income. The board may direct the board of investments to invest funds from state special revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the state special revenue account of the department from which the investment is made.

History: En. 46-105.1 by Sec. 1, Ch. 16, L. 1977; R.C.M. 1947, 46-105.1; amd. Sec. 44, Ch. 281, L. 1983.

Cross-References

Powers and duties of Board of Investments — unified investment program, 17-6-201.

81-1-105. Terminated. Sec. 6, Ch. 234, L. 1991.

History: En. Sec. 4, Ch. 234, L. 1991.

Part 2
Inspectors and Detectives

Part Cross-References

Special levies on commodities for livestock and commodity inspection, Art. XII, sec. 1, Mont. Const.

81-1-201. Appointment and powers. The department may appoint stock inspectors and detectives necessary for the protection of the livestock interests of this state. The department shall designate which inspectors and detectives are considered law enforcement officers, and those designated shall take the official oath required by law and shall have similar powers and authority to those conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs. The board shall devise an examination for the qualification of stock inspectors and detectives designated as law enforcement officers and may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade.

History: En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921; re-en. Sec. 3309, R.C.M. 1921; re-en. Sec. 3309, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1974; amd. Sec. 96, Ch. 310, L. 1974; R.C.M. 1947, 46-701; amd. Sec. 5, Ch. 444, L. 1983.

Cross-References

Official oath, 2-16-211.

Powers and authority of Sheriffs, 7-32-2121.

Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-1-202. Duties. The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. Every stock inspector and detective, on information that a person has committed an offense against the laws of this state by engaging in illegal branding or theft of stock or an offense against the laws of this state for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring him before the proper officer and notify the department of his acts.

History: En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907; re-en. Sec. 3311, R.C.M. 1921; re-en. Sec. 3311, R.C.M. 1935; amd. Sec. 97, Ch. 310, L. 1974; amd. Sec. 53, Ch. 359, L. 1977; R.C.M. 1947, 46-703.

Cross-References

Employment, compensation, and confidentiality of stock inspector, 7-21-3211 through 7-21-3213.

Authority of highway patrol officers to stop vehicles and determine rightful possession of livestock in vehicles, 44-1-1004.

Illegal branding or altering or obscuring of brand, 45-6-327.

Arrest, Title 46, ch. 6.

81-1-203. Compensation. The stock inspectors and detectives are under the exclusive control and direction of the department. They must be paid for their services in the amount which the department determines.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R.C.M. 1921; re-en. Sec. 3312, R.C.M. 1935; amd. Sec. 91, Ch. 147, L. 1963; amd. Sec. 98, Ch. 310, L. 1974; R.C.M. 1947, 46-704.

81-1-204. Assignment to districts. The stock inspectors and detectives are district officers, and the department must designate the district in which the inspectors and detectives serve, and the district must be designated in their commissions.

History: En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907; re-en. Sec. 3313, R.C.M. 1921; re-en. Sec. 3313, R.C.M. 1935; amd. Sec. 99, Ch. 310, L. 1974; R.C.M. 1947, 46-705.

Part 3

Administration of Animal Health Laws

Part Cross-References

Special levies on commodities for livestock and commodity inspection, Art. XII, sec. 1, Mont. Const.

81-1-301. Administrator — appointment and qualifications. (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) He must have a doctor of veterinary medicine degree from an accredited college or school, and he must be licensed to practice veterinary medicine in this state.

History: En. Sec. 3, Ch. 262, L. 1921; re-en. Sec. 3262, R.C.M. 1921; re-en. Sec. 3262, R.C.M. 1935; amd. Sec. 52, Ch. 310, L. 1974; R.C.M. 1947, 46-203.

Cross-References

License provisions governing practice of veterinary medicine, Title 37, ch. 18, part 3.

81-1-302. Duties of administrator. The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board.

History: En. Sec. 4, Ch. 262, L. 1921; re-en. Sec. 3263, R.C.M. 1921; re-en. Sec. 3263, R.C.M. 1935; amd. Sec. 53, Ch. 310, L. 1974; R.C.M. 1947, 46-204.

81-1-303. Administrator's expertise to be considered. In any action taken by the board in 81-2-102 and 81-20-101, the board shall ask for and consider the expertise and judgment of the administrator of the laws relating to animal health.

History: **En. 46-209.1 by Sec. 58, Ch. 310, L. 1974; R.C.M. 1947, 46-209.1.**

81-1-304. Appointment of federal veterinary inspectors. With the approval of either the federal veterinarian in charge in this state or the United States department of agriculture, the department of livestock may appoint federal veterinarians or federal lay inspectors stationed in this state, as deputies or agents for the department. All federal officers so appointed as deputies or agents of the department possess the powers and duties of regular deputies or agents of the department, but they shall act without compensation and hold office only at the pleasure of the department.

History: **En. Sec. 6, Ch. 262, L. 1921; re-en. Sec. 3265, R.C.M. 1921; re-en. Sec. 3265, R.C.M. 1935; amd. Sec. 54, Ch. 310, L. 1974; R.C.M. 1947, 46-206.**

Cross-References

Powers and authority of Sheriffs, 7-32-2121, 81-3-203.

Part 4
Rodent Control
(Renumbered. Sec. 4, Ch. 65, L. 1983)

Part Compiler's Comments

Sections Renumbered:

81-1-401. Renumbered 80-7-1101. Sec. 4, Ch. 65, L. 1983.

81-1-402. Renumbered 80-7-1102. Sec. 4, Ch. 65, L. 1983.

81-1-403. Renumbered 80-7-1103. Sec. 4, Ch. 65, L. 1983.

CHAPTER 2
DISEASE CONTROL

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81-2-101. Authority of department agents.
81-2-102. Powers of department.
81-2-103. Adoption of rules.
81-2-104. Rules — agreement with federal government.
81-2-105. Authority of municipal corporations.
81-2-106. Cooperation by public officers.
81-2-107. Duty to report contagious diseases.
81-2-108. Diseased animals not to run at large — burial of carcasses.
81-2-109. Expenses, how paid — lien and foreclosure.
81-2-110. Expense of cleaning and disinfecting carriers' facilities.
81-2-111. Injunctive remedies.
81-2-112. Prohibition by governor on importation of animals from localities where disease exists — penalty.
81-2-113. Penalty.
81-2-114. Civil liability.
81-2-115 through 81-2-119 reserved.
81-2-120. Management of wild buffalo or bison for disease control.
81-2-121. Taking of publicly owned wild buffalo or bison that are present on private property — notice — supplemental feeding — penalty.

Part 2 — Indemnity

81-2-201. Classification of animals as to compensation for slaughter.

81-2-202. Payment for other personal property.
81-2-203. Indemnity — from what funds paid.
81-2-204. Presentation of claims for indemnity.
81-2-205. Indemnity for class two animals in state less than one hundred twenty days.
81-2-206. Verification and payment of claims.
81-2-207. Payment from county funds.
81-2-208. Sale of condemned carcasses — disposition of proceeds.
81-2-209. When no indemnity.
81-2-210. Compensation from federal government or other agency.

Part 3 — Disease Control Area

81-2-301. Establishment of livestock disease control area — entry into area — compulsory inspection.
81-2-302. Duty of department of revenue.
81-2-303. Owner guilty of misdemeanor, when.

Part 4 — Regulation of Semen Used for Artificial Insemination

81-2-401. Definitions.
81-2-402. Administration by department of livestock.
81-2-403. Only certain sires to be used for artificial insemination.

Part 5 — Treatment of Garbage Fed to Swine

81-2-501. Definitions.
81-2-502. Licenses.
81-2-503. Applications for licenses.
81-2-504. Power to adopt rules.
81-2-505. Entry of premises for inspection — keeping of records.
81-2-506. Power to administer oaths, subpoena witnesses, and receive evidence.
81-2-507. Power of department and board to restrain operation of garbage feeder.
81-2-508. Power to revoke license of garbage feeder.
81-2-509. Cooking or other treatment of garbage.
81-2-510. Garbage originating on or removed from airplanes not to be treated or fed.
81-2-511. Penalties.

Part 6 — Tuberculin Regulation

81-2-601. Tuberculin — permission for sale or distribution of.
81-2-602. Report of sales or distribution.
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Part 7 — Importation Permits and Health Certificates

81-2-701. Short title.
81-2-702. Definitions.
81-2-703. Documents required for importation — exemptions.
81-2-704. Quarantine for illegal entry — liability for expenses.
81-2-705. Lien resulting from quarantine — foreclosure of lien.
81-2-706. Consignment requirements.
81-2-707. Department rulemaking power.
81-2-708. Penalty.

Part 8 — Vaccination

81-2-801. Required brucellosis vaccination.
81-2-802 through 81-2-804 reserved.
81-2-805. Penalty.

Part 1
General Administration

81-2-101. Authority of department agents. In the performance of his official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products intended for sale or disposal as food. The agent or officer may enter anywhere where there may be found livestock affected with or which has been exposed to or which the officer has reason to believe is either affected with or has been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects.

History: En. Sec. 7, Ch. 262, L. 1921; re-en. Sec. 3266, R.C.M. 1921; re-en. Sec. 3266, R.C.M. 1935; amd. Sec. 55, Ch. 310, L. 1974; R.C.M. 1947, 46-207.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by livestock and which in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect such fees as the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees shall be deposited in the state special revenue fund for the use of the animal health functions of the department.

(d) adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state before it may be imported into this state;

(e) adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state;

(f) adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of part 1, 2, or 3 of this chapter, 81-9-201, 81-20-101, 81-21-102, 81-21-103, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or which has been exposed to an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any such infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under part 1, 2, or 3 of this chapter, 81-20-101, 81-21-102, 81-21-103;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and

conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses.

History: (1)En. Sec. 8, Ch. 262, L. 1921; re-en. Sec. 3267, R.C.M. 1921; re-en. Sec. 3267, R.C.M. 1935; amd. Sec. 56, Ch. 310, L. 1974; amd. Sec. 1, Ch. 139, L. 1975; amd. Sec. 9, Ch. 12, L. 1977; Sec. 46-208, R.C.M. 1947; (2)En. Sec. 31, Ch. 262, L. 1921; re-en. Sec. 3290, R.C.M. 1921; re-en. Sec. 3290, R.C.M. 1935; amd. Sec. 82, Ch. 310, L. 1974; Sec. 46-240, R.C.M. 1947; R.C.M. 1947, 46-208, 46-240; amd. Sec. 1, Ch. 28, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 577, L. 1987.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Veterinary medicine, Title 37, ch. 18.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Related agricultural rules, 80-9-103.

Consideration of administrator's expertise, 81-1-303.

Penalty for violation of brucellosis vaccination requirements, 81-2-805.

Slaughterhouse license — fees and renewals, 81-9-201.

Injunctive remedies to prevent violation of rules, 81-21-104.

Penalty for violation of rule or order, 81-21-105.

81-2-103. Adoption of rules. The department shall adopt and enforce rules for the inspection and tuberculin testing of dairy cattle or other animals and for the inspection, testing, treatment, or disposition of livestock or other animals affected with or which may have been exposed to infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in this chapter or 81-20-101.

History: En. Sec. 9, Ch. 262, L. 1921; re-en. Sec. 3268, R.C.M. 1921; re-en. Sec. 3268, R.C.M. 1935; amd. Sec. 59, Ch. 310, L. 1974; amd. Sec. 10, Ch. 12, L. 1977; R.C.M. 1947, 46-211; amd. Sec. 1, Ch. 110, L. 1981.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-104. Rules — agreement with federal government. When the department determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in cooperation with the United States department of agriculture or other federal agency, and to appraise and destroy animals affected with or which have been exposed to a disease or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state the rules adopted by the United States department of agriculture or other federal agency under authority of an act of congress or the portion considered necessary, suitable, or applicable. The department may adopt other rules necessary or desirable for this purpose and cooperate with the United States department of agriculture or other federal agency in the enforcement of the rules accepted and adopted.

History: En. Sec. 2, Ch. 177, L. 1937; amd. Sec. 71, Ch. 310, L. 1974; R.C.M. 1947, 46-227.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-105. Authority of municipal corporations. Nothing in this title prevents the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this title delegated to the department and its officers or agents.

History: En. Sec. 11, Ch. 262, L. 1921; re-en. Sec. 3270, R.C.M. 1921; re-en. Sec. 3270, R.C.M. 1935; amd. Sec. 63, Ch. 310, L. 1974; amd. Sec. 12, Ch. 12, L. 1977; R.C.M. 1947, 46-217; amd. Sec. 1, Ch. 14, L. 1979.

Cross-References

Opening of public market, 7-21-3303.

81-2-106. Cooperation by public officers. The department of public health and human services and local boards of health of a county, city, or town shall cooperate with and assist the department in matters that relate to the execution of its sanitary powers regarding livestock and their food products in the manner prescribed by the department, either by general rule or direct order.

History: En. Sec. 25, Ch. 262, L. 1921; re-en. Sec. 3284, R.C.M. 1921; re-en. Sec. 3284, R.C.M. 1935; amd. Sec. 78, Ch. 310, L. 1974; amd. Sec. 21, Ch. 12, L. 1977; R.C.M. 1947, 46-234; amd. Sec. 348, Ch. 418, L. 1995; amd. Sec. 548, Ch. 546, L. 1995.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Food establishments, Title 50, ch. 50.

81-2-107. Duty to report contagious diseases. A person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock or the presence of animals exposed to the disease in this state shall immediately give notice to the department.

History: En. Sec. 27, Ch. 262, L. 1921; re-en. Sec. 3286, R.C.M. 1921; re-en. Sec. 3286, R.C.M. 1935; amd. Sec. 80, Ch. 310, L. 1974; R.C.M. 1947, 46-236.

81-2-108. Diseased animals not to run at large — burial of carcasses. It shall be unlawful for any owner, agent, or person in charge of any domestic animal or animals that are known to be suffering from or exposed to a dangerous, infectious, contagious, or communicable disease to permit such animal or animals to run at large on the public range or public highway. It shall be the duty of the owner or agent or person in charge of animals which died or they have reason to suspect did die from an infectious, contagious, communicable, or dangerous disease to properly bury or burn the same.

History: En. Sec. 28, Ch. 262, L. 1921; re-en. Sec. 3287, R.C.M. 1921; re-en. Sec. 3287, R.C.M. 1935; R.C.M. 1947, 46-237.

Cross-References

Rabies control, Title 50, ch. 23.

81-2-109. Expenses, how paid — lien and foreclosure. (1) If there is no violation of law or department rule, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of diseased or exposed livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the designated supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the law or rules of the department.

(2) The expenses for which an owner, agent, or person in charge is liable under subsection (1) include:

(a) all investigatory expenses, including travel, meals, and lodging of all investigating officers representing the department; and

(b) all other expenses, extraordinary or otherwise, that in the judgment of the department are reasonably necessary to ensure that there has been or will be compliance with all applicable laws and rules.

(3) The department, at the conclusion of an investigation of a violation, shall serve notice on the violator, informing him of all expenses for which he is liable. The notice must state that if a response is not sent within 30 days of receipt of the notice, the notice is prima facie evidence of the reasonableness of the expenses and of the violator's liability for them.

(4) A showing by the department that a response to the notice required by subsection (3) was not received within 30 days of receipt of the notice is prima facie evidence of the reasonableness of the expenses stated and of the liability of the violator for those expenses.

(5) These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

History: En. Sec. 21, Ch. 262, L. 1921; re-en. Sec. 3280, R.C.M. 1921; re-en. Sec. 3280, R.C.M. 1935; amd. Sec. 74, Ch. 310, L. 1974; amd. Sec. 18, Ch. 12, L. 1977; R.C.M. 1947, 46-230; amd. Sec. 2, Ch. 28, L. 1979; amd. Sec. 1, Ch. 353, L. 1983.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

81-2-110. Expense of cleaning and disinfecting carriers' facilities. The expense of cleaning and disinfecting cars, yards, or other transportation facilities of a common carrier, when required by the department, is a charge against the common carrier. Also, the expense of supervising the cleaning and disinfecting of cars for transportation of livestock, when required at a point other than disinfection points agreed on between the department and the carrier, is a charge against the common carrier.

History: En. Sec. 22, Ch. 262, L. 1921; re-en. Sec. 3281, R.C.M. 1921; re-en. Sec. 3281, R.C.M. 1935; amd. Sec. 75, Ch. 310, L. 1974; R.C.M. 1947, 46-231.

Cross-References

Carriers of property, Title 69, ch. 11, part 4.

81-2-111. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of parts 1 through 3 of this chapter or rules adopted thereunder, notwithstanding the existence of other remedies at law.

When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

Cross-References

Injunctions, Title 27, ch. 19.

Penalty for misdemeanor, 46-18-212.

81-2-112. Prohibition by governor on importation of animals from localities where disease exists — penalty. (1) Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry or dangerous to dogs or other animals has become epidemic in certain localities in any other state, territory, District of Columbia, or other country, he shall issue a proclamation designating such localities and prohibiting the importation therefrom into this state, except under such restrictions as he may deem proper, of any livestock, poultry, dogs, or other animals or articles or commodities likely to convey such disease or diseases.

(2) Any person who, after the publication of such proclamation, knowingly receives any livestock, dog, fowl, or other animal or article or commodity designated in such proclamation as likely to convey disease from any of the prohibited districts and transports or conveys the same within the limits of this state is punishable by imprisonment in the county jail for not less than 60 days or more than 8 months and by a fine of not less than $300 or more than $5,000 or by both such fine and imprisonment and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of such proclamation.

History: (1)En. Sec. 1, Ch. 31, L. 1925; re-en. Sec. 3295.1, R.C.M. 1935; Sec. 46-245, R.C.M. 1947; (2)En. Sec. 2, Ch. 31, L. 1925; re-en. Sec. 3295.2, R.C.M. 1935; Sec. 46-246, R.C.M. 1947; R.C.M. 1947, 46-245, 46-246.

81-2-113. Penalty. Any person, persons, firm, or corporation violating any provision of parts 1 through 3 of this chapter, or the rule or order promulgated by authority of same shall be guilty of a misdemeanor. Violations shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; R.C.M. 1947, 46-238.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-2-114. Civil liability. A person, firm, or corporation which violates parts 1 through 3 of this chapter or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

81-2-115 through 81-2-119 reserved.

81-2-120. Management of wild buffalo or bison for disease control. (1) Whenever a publicly owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or bison may jeopardize Montana's compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or bison may be physically removed by the safest and most expeditious means from within the state boundaries, including but not limited to hazing and aversion tactics or capture, transportation, quarantine, or delivery to a department-approved slaughterhouse.

(b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(c) The live wild buffalo or bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or bison that are certified by the state veterinarian as brucellosis-free may be:

(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or bison; or

(ii) transferred to qualified tribal entities that participate in the disease control program provided for in this subsection (1)(c). Acquisition of wild buffalo or bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.

(d) Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or bison must be deposited in the state special revenue fund to the credit of the department.

(e) Any revenue generated in excess of the costs referred to in subsection (1)(c)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).

(2) Whenever the department is responsible for the death of a wild buffalo or bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or bison that enter Montana on private or public

land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with other state-administered or federally administered livestock disease control programs.

History: **En. Sec. 1, Ch. 346, L. 1995; amd. Sec. 2, Ch. 523, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 523 in (1), near end of introductory clause after "compliance with", inserted "other state-administered or"; in (1)(a), after "transportation", inserted "quarantine"; inserted (1)(c) allowing the sale or transfer of brucellosis-free bison; inserted (1)(d) regarding disposition of sale proceeds; inserted (1)(e) providing for deposit of excess revenue in the state special revenue fund; and in (4), near end after "compliance with", inserted "other state-administered or".

Cross-References

Wild buffalo or bison as species in need of management — policy — duties of Department of Fish, Wildlife, and Parks, 87-1-216.

81-2-121. Taking of publicly owned wild buffalo or bison that are present on private property — notice — supplemental feeding — penalty. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or bison that is suspected of carrying disease and that is present on the landowner's private property and is potentially associating with or otherwise threatening the landowner's livestock if:

(a) the landowner or agent notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or bison that is present on the landowner's property;

(b) the landowner or agent makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) the landowner or agent is not in violation of subsection (2).

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes.

History: **En. Sec. 3, Ch. 540, L. 1995.**

Part 2
Indemnity

Part Cross-References

Indemnity, Title 28, ch. 11, part 3.

81-2-201. Classification of animals as to compensation for slaughter. Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease, which are destroyed by order of the board, are designated as animals of class 1, and unless otherwise provided each of the animals shall be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease

is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or his agent. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there shall be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to $5 for the group appraisal, one-half of which shall be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of $100 for a registered purebred animal or the sum of $50 for a grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed $100 for a registered purebred animal or $50 for a grade animal.

(3) Animals which are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the department as a sanitary safeguard, are designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. The appraised value shall be determined in the manner set out in subsection (1) of this section. The appraisal of the animals shall be based on the meat, dairy, or breeding value of the animal, but where appraisal is based on breeding value of the animal, no appraisal may exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. No indemnity for a class 2 animal may be paid by a county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid for the animal unless the board, in its discretion, determines the best interests of this state will be

served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of $100 for a registered purebred animal or $50 for a grade animal. In all cases where the federal government or agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined under 81-2-210.

(4) Animals which are injured or killed while they are being inspected or tested under an order of the department or its agent, which do not come within either class 1 or class 2, may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board. Where it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or his agent, the whole claim, when approved, shall be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for animals of class 2.

History: En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R.C.M. 1921; re-en. Sec. 3271, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1943; amd. Sec. 1, Ch. 107, L. 1949; amd. Sec. 64, Ch. 310, L. 1974; amd. Sec. 13, Ch. 12, L. 1977; R.C.M. 1947, 46-218.

81-2-202. Payment for other personal property. Personal property other than livestock destroyed by order of the department shall be paid for on the basis of its appraised value. The appraised value is determined in the manner specified in 81-2-201 for the determination of the appraised value of animals.

History: En. Sec. 13, Ch. 262, L. 1921; re-en. Sec. 3272, R.C.M. 1921; re-en. Sec. 3272, R.C.M. 1935; amd. Sec. 2, Ch. 75, L. 1943; amd. Sec. 65, Ch. 310, L. 1974; R.C.M. 1947, 46-219.

81-2-203. Indemnity — from what funds paid. In payment for animals or property destroyed by order of the department, the state shall pay one-half of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity shall pay one-half of the total indemnity out of the general fund of the county.

History: En. Sec. 14, Ch. 262, L. 1921; re-en. Sec. 3273, R.C.M. 1921; re-en. Sec. 3273, R.C.M. 1935; amd. Sec. 66, Ch. 310, L. 1974; amd. Sec. 14, Ch. 12, L. 1977; R.C.M. 1947, 46-220.

81-2-204. Presentation of claims for indemnity. Claims against the state and county which arise from the destruction of animals or property by order of the department shall be made on forms provided by the department. They must contain an affidavit by the owner or his agent with knowledge of the animal or property, certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed under the law and the rules of the department. These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims shall also be accompanied by a certificate of appraisement as appraisal is determined under 81-2-201, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal.

History: En. Sec. 15, Ch. 262, L. 1921; re-en. Sec. 3274, R.C.M. 1921; re-en. Sec. 3274, R.C.M. 1935; amd. Sec. 4, Ch. 75, L. 1943; amd. Sec. 67, Ch. 310, L. 1974; R.C.M. 1947, 46-221.

81-2-205. Indemnity for class two animals in state less than one hundred twenty days. Indemnity for animals of class 2 shall be paid out of department funds when the animals have not been in this state for at least 120 days and the payment is authorized by the department under 81-2-209(1)(e).

History: En. Sec. 5, Ch. 75, L. 1943; amd. Sec. 68, Ch. 310, L. 1974; R.C.M. 1947, 46-222.

81-2-206. Verification and payment of claims. (1) All claims against the department must be verified by oath of the claimant or his agent with knowledge of the facts.

(2) Claims against the state arising under this part, if found correct, shall be processed and paid from funds of the department.

History: (1)En. Sec. 2, Ch. 262, L. 1921; re-en. Sec. 3261, R.C.M. 1921; re-en. Sec. 3261, R.C.M. 1935; amd. Sec. 20, Ch. 97, L. 1961; amd. Sec. 51, Ch. 310, L. 1974; Sec. 46-202, R.C.M. 1947; (2)En. Sec. 16, Ch. 262, L. 1921; re-en. Sec. 3275, R.C.M. 1921; re-en. Sec. 3275, R.C.M. 1935; amd. Sec. 21, Ch. 97, L. 1961; amd. Sec. 69, Ch. 310, L. 1974; amd. Sec. 15, Ch. 12, L. 1977; Sec. 46-224, R.C.M. 1947; R.C.M. 1947, 46-202, 46-224.

81-2-207. Payment from county funds. The board of county commissioners of the county liable in part for the indemnity for any such animal or property destroyed shall cause to be paid the amount due from said county out of the general funds of the county.

History: En. Sec. 17, Ch. 262, L. 1921; re-en. Sec. 3276, R.C.M. 1921; re-en. Sec. 3276, R.C.M. 1935; R.C.M. 1947, 46-225.

81-2-208. Sale of condemned carcasses — disposition of proceeds. Where the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner shall receive the net proceeds from the sale of the carcass. The proceeds shall be deducted from his claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms he considers to be in the best interests of this state, and the net proceeds obtained from the sale shall be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due him.

History: En. Sec. 18, Ch. 262, L. 1921; re-en. Sec. 3277, R.C.M. 1921; re-en. Sec. 3277, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1937; amd. Sec. 70, Ch. 310, L. 1974; amd. Sec. 16, Ch. 12, L. 1977; R.C.M. 1947, 46-226.

81-2-209. When no indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

(a) animals belonging to the United States;

(b) animals brought into this state which violate this chapter or rules of the department;

(c) animals which the owner or claimant knew to be diseased or had notice of the disease at the time they came into his possession;

(d) animals which had the disease for which they were slaughtered or which were destroyed because of exposure to the disease at the time of their arrival in this state. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.

(e) animals which have not been in this state for at least 120 days before the discovery of the disease; however, class 2 animals which have not been in the state 120 days may be paid for when payment is authorized by the department;

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease which requires them to be destroyed by order of the department.

(2) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease.

History: En. Sec. 19, Ch. 262, L. 1921; re-en. Sec. 3278, R.C.M. 1921; re-en. Sec. 3278, R.C.M. 1935; amd. Sec. 22, Ch. 97, L. 1961; amd. Sec. 72, Ch. 310, L. 1974; amd. Sec. 17, Ch. 12, L. 1977; R.C.M. 1947, 46-228.

81-2-210. Compensation from federal government or other agency. (1) If the federal government or an agency other than the state or county compensates the owner for livestock or property destroyed by order of the department, the amount of the compensation from the federal government or other agency shall be deducted from the owner's claim as filed against the state and county, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

(2) If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government or compensating agency other than the state or county, by violation of the rules of the federal government or other agency, an amount equal to the indemnity which would have been paid by the federal government or other indemnifying agency but for the forfeiture shall also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

History: En. Sec. 20, Ch. 262, L. 1921; re-en. Sec. 3279, R.C.M. 1921; re-en. Sec. 3279, R.C.M. 1935; amd. Sec. 3, Ch. 75, L. 1943; amd. Sec. 1, Ch. 164, L. 1945; amd. Sec. 73, Ch. 310, L. 1974; R.C.M. 1947, 46-229.

Part 3

Disease Control Area

81-2-301. Establishment of livestock disease control area — entry into area — compulsory inspection. (1) Upon receipt of a petition signed by not less than 75% of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, representing not less than 50% of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the board may establish such school district as a disease control area and may enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules promulgated by the department for the inspection, eradication, treatment, or vaccination of such livestock and may reimburse the owners of livestock slaughtered by order of the department or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

(2) In any circumscribed disease control area as established under this section by the department, no other livestock of the species designated by the department to be inspected, tested, treated, or vaccinated may enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the department or accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the department.

(3) When 75% or more of the school districts in any county in Montana are established under this section by the department as disease control areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the department.

History: En. Sec. 1, Ch. 94, L. 1943; amd. Sec. 1, Ch. 27, L. 1973; amd. Sec. 11, Ch. 12, L. 1977; R.C.M. 1947, 46-212.

81-2-302. Duty of department of revenue. The property tax record of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The department of revenue shall certify to the department when the necessary 75% of the owners of livestock representing not less than 50% of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition.

History: En. Sec. 2, Ch. 94, L. 1943; amd. Sec. 60, Ch. 310, L. 1974; R.C.M. 1947, 46-213; amd. Sec. 149, Ch. 27, Sp. L. November 1993.

Cross-References

Taxation — assessment of livestock, Title 15, ch. 24, part 9.

81-2-303. Owner guilty of misdemeanor, when. A person in a disease control area who does not gather his livestock after being notified by the department or its agent to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or violates this part is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 94, L. 1943; amd. Sec. 61, Ch. 310, L. 1974; R.C.M. 1947, 46-214.

Cross-References

Penalty for misdemeanor, 46-18-212.

Part 4
Regulation of Semen Used for Artificial Insemination

81-2-401. Definitions. As used herein:

(1) "artificial insemination" shall mean the fertilization of or the attempt to fertilize the ova of the female animal by placing and implanting by artificial means in the genital tract of the female animal the seminal fluid obtained from the male animal;

(2) "sire" shall mean the male animal of any species, including but not limited to bulls, stallions, rams, boars, studs, bucks, and cocks.

History: En. Secs. 2, 3, Ch. 37, L. 1953; R.C.M. 1947, 46-2502, 46-2503.

81-2-402. Administration by department of livestock. This part shall be administered by the department of livestock, and in addition to any powers now conferred by law, the department shall have the power and duty to promulgate such reasonable rules and orders not contrary to the provisions of this part, when required, as may be necessary for the proper administration of this part, specifically including but not limited to rules and orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries.

History: En. Sec. 5, Ch. 37, L. 1953; amd. Sec. 2, Ch. 102, L. 1973; R.C.M. 1947, 46-2505.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Consignment requirements, 81-2-706.

81-2-403. Only certain sires to be used for artificial insemination. (1) All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease, other transmissible, infectious, contagious diseases, transmissible hereditary malformations, and other detrimental or undesirable characteristics. Proof of fitness of these sires shall be provided to the department by the owner or parties providing the sires for artificial insemination.

(2) Semen imported into this state may not be used by any artificial inseminator until proof is made to the satisfaction of the department that the sire from which the semen was taken was free from the above-mentioned diseases.

History: En. Sec. 15, Ch. 37, L. 1953; amd. Sec. 1, Ch. 102, L. 1973; amd. Sec. 170, Ch. 310, L. 1974; R.C.M. 1947, 46-2515.

Part 5
Treatment of Garbage Fed to Swine

81-2-501. Definitions. When used in this part, the following definitions apply:

(1) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts thereof.

(2) "Garbage feeder" means a person who handles, prepares, cooks, or otherwise treats garbage to feed to swine or other animals, as well as a person who feeds garbage to swine or other animals.

(3) "Person" means the state, any municipality, political subdivision, school district, institution, public or private corporation, individual, partnership, or other entity.

History: En. Sec. 1, Ch. 63, L. 1953; R.C.M. 1947, 46-2601.

81-2-502. Licenses. (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or to feed garbage to swine or other animals without first securing a license for that purpose from the department of livestock. One license issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31 of the year in which it is issued. The department shall establish a fee to be charged for all licenses issued under this part. All license fees collected shall be paid into the state special revenue fund for the use of the department.

(2) This part does not apply to a person who feeds only his own household garbage to swine or other animals.

History: En. Sec. 2, Ch. 63, L. 1953; amd. Sec. 171, Ch. 310, L. 1974; R.C.M. 1947, 46-2602; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 6, Ch. 444, L. 1983.

81-2-503. Applications for licenses. A person desiring to obtain a license to feed garbage to swine or other animals shall make a written application for the license to the department under the rules or orders prescribed by the department.

History: En. Sec. 3, Ch. 63, L. 1953; amd. Sec. 172, Ch. 310, L. 1974; R.C.M. 1947, 46-2603.

81-2-504. Power to adopt rules. The department shall administer and enforce this part and may adopt and enforce rules or orders necessary for the supervision, control, and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals. The rules or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of equipment used to store, treat, or feed garbage, and equipment, including vehicles, used for the transportation of garbage.

History: En. Sec. 4, Ch. 63, L. 1953; amd. Sec. 173, Ch. 310, L. 1974; R.C.M. 1947, 46-2604.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-505. Entry of premises for inspection — keeping of records. (1) An authorized representative of the department may enter at reasonable times on private or public property to inspect and investigate conditions relating to the treating of garbage to be fed, or the feeding of garbage, to swine or other animals.

(2) An authorized representative of the department may examine records or memoranda pertaining to the treatment or feeding of garbage to swine or

other animals. The department may require maintenance of records it considers necessary, relating to the operation of equipment for and procedure of treating or feeding garbage to swine or other animals, and may require copies of the records to be submitted to the department periodically.

History: En. Sec. 5, Ch. 63, L. 1953; amd. Sec. 174, Ch. 310, L. 1974; R.C.M. 1947, 46-2605.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-2-506. Power to administer oaths, subpoena witnesses, and receive evidence. The department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this part.

History: En. Sec. 8, Ch. 63, L. 1953; amd. Sec. 177, Ch. 310, L. 1974; R.C.M. 1947, 46-2608.

Cross-References

Oaths, Title 1, ch. 6.

Subpoenas in administrative proceedings, 2-4-104.

Subpoenas generally, Title 26, ch. 2, part 1.

81-2-507. Power of department and board to restrain operation of garbage feeder. (1) The department may restrain the operation of a licensed garbage feeder whose operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on 5 days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public or animal health requiring immediate and summary abatement.

(2) The licensee may appeal to the district court on giving written notice of appeal to the restraining authority within 10 days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement.

(3) Where the restraining order is issued after hearing, the hearing before the district court is on the record, together with additional evidence offered. Where the order is issued without hearing, the hearing before the district court shall be upon evidence offered before the court.

History: En. Sec. 6, Ch. 63, L. 1953; amd. Sec. 175, Ch. 310, L. 1974; R.C.M. 1947, 46-2606.

Cross-References

Injunctions, Title 27, ch. 19.

81-2-508. Power to revoke license of garbage feeder. The licenses to feed garbage to swine or other animals may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with the laws of this state or rules or orders of the department, and on a hearing before the department, after 10 days' written notice. An appeal to the district court stays execution of an order of the department revoking a license.

History: En. Sec. 7, Ch. 63, L. 1953; amd. Sec. 176, Ch. 310, L. 1974; R.C.M. 1947, 46-2607.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

81-2-509. Cooking or other treatment of garbage. All garbage, regardless of previous processing, shall, before being fed to swine or other animals, be thoroughly heated to at least 212 degrees F for at least 30 minutes, unless treated in some other manner which is approved in writing by the department as being equally effective for the protection of public and animal health.

History: En. Sec. 9, Ch. 63, L. 1953; amd. Sec. 178, Ch. 310, L. 1974; R.C.M. 1947, 46-2609.

81-2-510. Garbage originating on or removed from airplanes not to be treated or fed. Garbage originating on or removed from airplanes landing in this state may not be treated for feeding or be fed to swine or other animals. The powers granted in 81-2-505 to the department to enter on private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals include the inspection and investigation of garbage disposal methods employed at airports and all facilities at airports and aircraft.

History: En. Sec. 10, Ch. 63, L. 1953; amd. Sec. 179, Ch. 310, L. 1974; R.C.M. 1947, 46-2610.

Cross-References

Airport operations, Title 67, ch. 10, part 3.

81-2-511. Penalties. Any person who shall violate any of the provisions of or who fails to perform any duty imposed by this part shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 or more than $250 or by imprisonment for a term of not more than 6 months or by both such fine and imprisonment. In addition thereto, such person may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

History: En. Sec. 11, Ch. 63, L. 1953; R.C.M. 1947, 46-2611.

Part 6

Tuberculin Regulation

81-2-601. Tuberculin — permission for sale or distribution of. A person, firm, or corporation desiring to sell or distribute tuberculin for animal use in this state must first secure permission from the department.

History: En. Sec. 1, Ch. 118, L. 1917; re-en. Sec. 3296, R.C.M. 1921; re-en. Sec. 3296, R.C.M. 1935; amd. Sec. 84, Ch. 310, L. 1974; R.C.M. 1947, 46-301.

81-2-602. Report of sales or distribution. A person, firm, or corporation which has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day it sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to him.

History: En. Sec. 2, Ch. 118, L. 1917; re-en. Sec. 3297, R.C.M. 1921; re-en. Sec. 3297, R.C.M. 1935; amd. Sec. 85, Ch. 310, L. 1974; R.C.M. 1947, 46-302.

81-2-603. Violation — penalty. Any person, firm, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and punished by a fine of not less than $25 and not more than $500 or by imprisonment for not less than 30 days and not more than 90 days or both fine and imprisonment.

History: En. Sec. 3, Ch. 118, L. 1917; re-en. Sec. 3298, R.C.M. 1921; re-en. Sec. 3298, R.C.M. 1935; R.C.M. 1947, 46-303.

Part 7
Importation Permits and Health Certificates

Part Cross-References

How expenses paid — lien and foreclosure, 81-2-109.

Regulation of semen for artificial insemination, Title 81, ch. 2, part 4.

Cattle importation — brucellosis vaccination, 81-2-801.

Penalty for violation of brucellosis vaccination requirements, 81-2-805.

Inspection of imported livestock — entry permit, 81-3-214.

Quarantine of diseased animals, 81-8-215.

81-2-701. Short title. This part may be cited as the "Animal Importation Permit and Health Certificate Act of 1981".

History: En. Sec. 1, Ch. 65, L. 1981.

81-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, game farm animals, fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. The term includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described on the certificate have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, ostriches, rheas, emus, and goats.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants.

History: En. Sec. 2, Ch. 65, L. 1981; amd. Sec. 1, Ch. 166, L. 1989; amd. Sec. 6, Ch. 531, L. 1991; amd. Sec. 3, Ch. 417, L. 1993; amd. Sec. 8, Ch. 206, L. 1995.

81-2-703. Documents required for importation — exemptions. (1) Except as provided in subsection (6), no animal, animal semen, or animal biologic may be brought into the state without a permit and also a health certificate.

(2) The department shall issue a permit if no significant danger to the public health will ensue upon importation of the animal into the state. No

permit may be issued for livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under United States department of agriculture supervision.

(3) The department may waive the requirement for a health certificate or a permit as provided in subsection (7).

(4) The requirements of subsection (1) apply regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement.

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle shall have in his possession a copy of the permit and, where applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, such transitory cargo may be unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate or a permit shall be based upon evidence that there will be no significant danger to the public health if the exemption is granted.

History: En. Sec. 3, Ch. 65, L. 1981; amd. Sec. 1, Ch. 44, L. 1983.

81-2-704. Quarantine for illegal entry — liability for expenses. (1) Animals, animal semen, or animal biologics which enter the state of Montana without the required importation papers or in violation of any rules of the department shall be held in quarantine at the risk of the owner.

(2) The quarantine may be released only after the department has been satisfied, by appropriate means, that the animals, animal semen, or animal biologics under quarantine meet the requirements of law and the rules of the department.

(3) The owner of animals, animal semen, or animal biologics quarantined under this part is liable for all department expenses resulting from that quarantine except the expense of the salary of the supervising officer representing the department. Expenses include, but are not limited to, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, supervision of treatment, and laboratory testing.

History: En. Sec. 4, Ch. 65, L. 1981.

81-2-705. Lien resulting from quarantine — foreclosure of lien. (1) In accordance with the provisions of 81-2-109, the expenses of quarantine detailed in 81-2-704 are a lien on the animals, semen, or biologics and the department may retain possession of them until the charges and expenses are paid. The lien is dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the animals, semen, or biologics or as much of them as may be necessary to pay the expenses.

(2) Posting notice for 10 days at three public places in the county is required prior to auction. The lien may also be foreclosed by filing an action

against the owner of the property to recover the amount of charges and expenses in a court of competent jurisdiction.

History: En. Sec. 5, Ch. 65, L. 1981.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

81-2-706. Consignment requirements. (1) All animals, animal semen, or animal biologics brought into Montana, other than transitory cargo, must be consigned to or in the care of a person, entity, or authorized agent of either located in Montana.

(2) The person, entity, or authorized agent must notify the department of its intent to receive any animals, animal semen, or animal biologics and is responsible for acquiring all required permits and ensuring that they are accompanied by all required health certificates.

(3) No person consigning, transporting, or receiving animals, animal semen, or animal biologics into Montana may authorize, order, or carry out any diversion of them or any portion thereof to a destination or consignee other than as set forth on the permit or health certificate without first obtaining written permission from the department.

History: En. Sec. 6, Ch. 65, L. 1981.

Cross-References

Administration of semen regulations by Department of Livestock, 81-2-402.

81-2-707. Department rulemaking power. The department may promulgate, administer, and enforce rules necessary to implement this part.

History: En. Sec. 7, Ch. 65, L. 1981.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-708. Penalty. A person convicted of violating this part shall be fined not more than $500, be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 8, Ch. 65, L. 1981.

Part 8

Vaccination

81-2-801. Required brucellosis vaccination. (1) Except as provided in subsections (2) and (3), beginning October 1, 1999, no female cattle over the age of 4 months may be imported into the state of Montana for any purpose other than immediate slaughter unless they have been officially vaccinated, by a licensed veterinarian approved in the veterinarian's state to administer the vaccination, with a Brucella abortus vaccine approved by the veterinary biologics division, U.S. department of agriculture.

(2) Cattle being transported or moved through Montana with no intent to unload in the state are exempt from this section. In an emergency situation they may be unloaded in compliance with quarantine rules promulgated by the department of livestock pursuant to 81-2-102.

(3) Cattle that have been spayed are exempt from subsection (1).

History: En. Sec. 1, Ch. 111, L. 1981; amd. Sec. 1, Ch. 54, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 54 in (1), after exception clause, inserted "beginning October 1, 1999"; and made minor changes in style. Amendment effective March 13, 1997.

Cross-References

Health certificates — importation requirements, Title 81, ch. 2, part 7.

Inspection of imported livestock — entry permit, 81-3-214.

Quarantine of diseased animals, 81-8-215.

81-2-802 through 81-2-804 reserved.

81-2-805. Penalty. A person convicted of violating this part shall be fined not more than $500, be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 1, Ch. 10, L. 1985.

CHAPTER 3

MARKS AND BRANDS

Part 1 — Recording of Marks and Brands

81-3-101. Recorder of marks and brands.
81-3-102. Recording of brands required — game farm animals to be marked — limit.
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81-3-108. Penalty.

Part 2 — Inspection of Marks and Brands

81-3-201. Definitions.
81-3-202. Rules.
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81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits.
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81-3-214. Entry permit.
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81-3-216. Repealed.
81-3-217 through 81-3-220 reserved.
81-3-221. Brands fraudulently changed.
81-3-222. Compensation for animals killed.
81-3-223. Action by dissatisfied owner — costs.
81-3-224 through 81-3-230 reserved.
81-3-231. Penalties.
81-3-232. Penalty for noninspection of dead animal in feedlot.
81-3-233. Penalty for removal of livestock from state without inspection — exception.

Part 1
Recording of Marks and Brands

Part Cross-References

Employment of stock inspector, 7-21-3211 through 7-21-3213.

Jurisdiction of highway patrol officers — criminal mischief, 44-1-1001.

Illegal branding or altering or obscuring of brand, 45-6-327.

81-3-101. Recorder of marks and brands. The department of livestock is the general recorder of marks and brands.

History: En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907; re-en. Sec. 3299, R.C.M. 1921; re-en. Sec. 3299, R.C.M. 1935; amd. Sec. 89, Ch. 310, L. 1974; R.C.M. 1947, 46-601.

81-3-102. Recording of brands required — game farm animals to be marked — limit. (1) It is unlawful for a person to artificially brand, mark, or cause to be artificially branded or marked any domestic animal or livestock running at large on the public domain or open range or that may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded with the department in the name of the person within the period of 10 years immediately preceding the branding or marking.

(2) Game farm animals, as defined in 87-4-406, exclusive of carnivores and omnivores, must be identified by use of a recorded whole herd mark or brand in compliance with the requirements of Title 87, chapter 4, and this chapter.

(3) No more than five brands may be recorded or rerecorded by one person.

History: En. Sec. 1, Ch. 144, L. 1921; re-en. Sec. 3301, R.C.M. 1921; re-en. Sec. 3301, R.C.M. 1935; amd. Sec. 90, Ch. 310, L. 1974; R.C.M. 1947, 46-603; amd. Sec. 2, Ch. 6, L. 1991; amd. Sec. 1, Ch. 30, L. 1993.

Cross-References

Branding animals running at large, 81-4-214.

Security interests concerning livestock, Title 81, ch. 8, part 3.

81-3-103. Application for recording — record of brands. (1) A person desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock shall make application for the mark or brand to the department. The application must be in writing and must contain the name, residence, and post-office address of the applicant and the species of the animals on which the mark or brand is to be used. An applicant may apply for a seasonal mark or brand that is designated for use only for a specific period of time and that is subject to renewal upon termination of that period.

(2) The department shall designate for the applicant's use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded or rerecorded, within the period of 10 years immediately preceding the time of filing the application, in the name of some person other than the applicant. The department shall designate the position on the animals where the mark or brand must be placed and the species of animals on which the mark or brand may be used.

(3) The department shall keep a record in a book kept by it for that purpose of the particular mark or brand, the position on the animals where the mark or brand is to be used, the species of animals on which the mark or brand is to

be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it.

History: **En. Sec. 2, Ch. 144, L. 1921; re-en. Sec. 3302, R.C.M. 1921; re-en. Sec. 3302, R.C.M. 1935; amd. Sec. 91, Ch. 310, L. 1974; R.C.M. 1947, 46-604; amd. Sec. 2, Ch. 166, L. 1989; amd. Sec. 3, Ch. 6, L. 1991.**

Cross-References

Public records, Title 2, ch. 6.

81-3-104. Designation of years for rerecording brands. Each 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. Subject to the provisions of 81-3-102(3), the department shall, on the application of a person or the transferee of the person made in a year that is a year for rerecording marks and brands, rerecord a mark or brand that at the time of the application is recorded with the department in the name of the person. A mark or brand that was not originally recorded or rerecorded in the name of the person during the rerecording year last preceding the date when the application is filed or that was not originally recorded in the name of the person or the person's predecessor or predecessors in interest between the time of the application and the rerecording year last preceding the application is not of record in the department.

History: **En. Sec. 3, Ch. 144, L. 1921; re-en. Sec. 3303, R.C.M. 1921; re-en. Sec. 3303, R.C.M. 1935; amd. Sec. 92, Ch. 310, L. 1974; amd. Sec. 27, Ch. 12, L. 1977; R.C.M. 1947, 46-605; amd. Sec. 4, Ch. 6, L. 1991; amd. Sec. 2, Ch. 30, L. 1993; amd. Sec. 1, Ch. 14, L. 1995.**

81-3-105. Right of owner of recorded brand. A person in whose name a mark or brand is recorded is entitled to the exclusive use of the mark or brand on the species of animal and in the position designated in the record. A copy of the record certified by the department is prima facie evidence of this right, and the certificate is also prima facie evidence that the person entitled to use the mark or brand is the owner of all animals on which it appears in the position and on the species of animal stated in the certificate.

History: **En. Sec. 4, Ch. 144, L. 1921; re-en. Sec. 3304, R.C.M. 1921; re-en. Sec. 3304, R.C.M. 1935; amd. Sec. 93, Ch. 310, L. 1974; R.C.M. 1947, 46-606; amd. Sec. 5, Ch. 6, L. 1991.**

81-3-106. Publication of notice of rerecording brands. Between January 1 and June 30 in each rerecording year, the department shall publish, in at least one issue of at least one newspaper of general circulation in each county of this state in which a newspaper is published, a notice to the effect that the year is a year for rerecording marks and brands and that no mark or brand continues of record unless rerecorded. The department shall also mail to each person in whose name a mark or brand stands of record a similar notice addressed to the person at his post-office address as shown by the records in the department.

History: **En. Sec. 5, Ch. 144, L. 1921; re-en. Sec. 3305, R.C.M. 1921; re-en. Sec. 3305, R.C.M. 1935; amd. Sec. 94, Ch. 310, L. 1974; R.C.M. 1947, 46-607; amd. Sec. 6, Ch. 6, L. 1991.**

81-3-107. Fees for department — deposit requirements. (1) The department shall establish, charge, and collect a fee for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall establish and charge a fee for providing a certified copy of a record and a duplicate certificate. The department may upon request research mark or brand histories and may charge a fee of up to $50 for each mark or brand, based on time involved in research. All fees collected must be paid into the state special revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any 1 year except in case of an emergency declared by the governor or the board.

(2) Money collected as fees under subsection (1) is not subject to the deposit requirements of 17-6-105 but must be deposited by the department within a reasonable time after receipt.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R.C.M. 1921; amd. Sec. 1, Ch. 14, L. 1929; re-en. Sec. 3307, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969; amd. Sec. 95, Ch. 310, L. 1974; amd. Sec. 1, Ch. 10, L. 1977; R.C.M. 1947, 46-609; amd. Sec. 1, Ch. 34, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 7, Ch. 444, L. 1983; amd. Sec. 2, Ch. 14, L. 1995.

Cross-References

Employment of stock inspector, 7-21-3211 through 7-21-3213.

Jurisdiction of highway patrol officers — criminal mischief, 44-1-1001.

81-3-108. Penalty. A person violating any provision of this part is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 6, Ch. 144, L. 1921; re-en. Sec. 3306, R.C.M. 1921; re-en. Sec. 3306, R.C.M. 1935; R.C.M. 1947, 46-608; amd. Sec. 7, Ch. 6, L. 1991.

Cross-References

Penalty for branding at certain times, 81-4-214.

Part 2

Inspection of Marks and Brands

Part Cross-References

Special levies on commodities for livestock and commodity inspection, Art. XII, sec. 1, Mont. Const.

Employment of stock inspector, 7-21-3211 through 7-21-3213.

Illegal brand or alteration — penalty, 45-6-327.

Cancellation or suspension of livestock market certificate for violation of this part, 81-8-254.

Security interests concerning livestock, Title 81, ch. 8, part 3.

81-3-201. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means a bovine animal, horse, mule, or ass, regardless of its age or sex.

(4) "Person" means an individual, partnership, corporation, association, firm, or entity not enumerated that is capable of owning or controlling livestock.

(5) "Specially qualified deputy stock inspector" means a deputy state stock inspector who has been certified by the department, under rules adopted

pursuant to 81-3-202, as qualified to conduct an inspection for a permanent transportation permit for a saddle, work, or show horse.

(6) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector.

History: **(1), (3) thru (5)En. Sec. 103, Ch. 310, L. 1974; amd. Sec. 1, Ch. 41, L. 1977; Sec. 46-801.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 32, L. 1974; Sec. 46-239.1, R.C.M. 1947; R.C.M. 1947, 46-239.1, 46-801.1; amd. Sec. 1, Ch. 298, L. 1979; amd. Sec. 1, Ch. 6, L. 1991; amd. Sec. 3, Ch. 30, L. 1993; amd. Sec. 4, Ch. 417, L. 1993; amd. Sec. 1, Ch. 376, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 376 in definition of livestock, at end, deleted "and includes bison, sheep, elk, and game farm animals, as defined in 87-4-406, exclusive of carnivores and omnivores"; inserted definition of specially qualified deputy stock inspector; and made minor changes in style. Amendment effective April 24, 1997.

Cross-References

State stock inspector — hide dealers — slaughterhouses, 81-9-401.

81-3-202. Rules. The department may adopt rules necessary to carry out this part.

History: **En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977; R.C.M. 1947, 46-802(5).**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Authority of highway patrol officers to stop vehicles and determine rightful possession of livestock, 44-1-1004.

81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock which is intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection therefor if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify ownership of the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information upon the form of certificate as the department may from time to time require. One copy of the certificate shall be retained by the inspector, one copy shall be furnished by the inspector to the owner or shipper of the livestock, and one copy shall be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment

permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles, and any other information upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within 36 hours from date and time of issue; however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit shall be retained by the inspector, one copy shall be filed by the inspector with the department within 5 days of the date of issue, and one copy shall be furnished by the inspector to the owner or shipper of the livestock, which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

(4) Upon application of an owner or his agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession thereof, a state stock inspector shall issue a transportation permit which will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or his agent for purposes of grazing. The transportation permit shall state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in 81-3-211(6)(d). A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith.

(5) Any person transporting strays or livestock not lawfully under his control is guilty of a misdemeanor and punishable as provided in 81-3-231.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977; R.C.M. 1947, 46-802(1) thru (4); amd. Sec. 1, Ch. 235, L. 1979; amd. Sec. 3, Ch. 166, L. 1989.

Cross-References

Authority of highway patrol officers to stop vehicles and determine rightful possession of livestock, 44-1-1004.

Powers and duties of county Livestock Protective Committee, 81-6-103.

81-3-204. Seizure of livestock — retention of livestock — sale — disposal of proceeds. (1) All state stock inspectors inspecting any livestock before or after shipment or removal from any county in this state, upon a change of ownership, or at the preslaughter inspection at a licensed slaughterhouse may inspect and seize either at the point of sale, shipment, destination, or slaughter or en route any livestock or proceeds thereof which the inspector believes is stolen or upon which brands have been altered or obliterated or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this section, a state stock inspector may retain the livestock in his possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brands, if any, and a statement of the reason for the seizure and sale. The proceeds shall be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History: En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971; amd. Sec. 3, Ch. 247, L. 1973; amd. Sec. 107, Ch. 310, L. 1974; amd. Sec. 3, Ch. 482, L. 1977; R.C.M. 1947, 46-803; amd. Sec. 2, Ch. 235, L. 1979.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections shall receive a fee established by the department for each head inspected. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county for all livestock, the inspector issuing the permits shall receive a fee established by the department for each permit issued and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive a fee established by the department for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection shall receive a fee established by the department for each head inspected. All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive a fee established by the department for each head inspected from the owner or the person for whom the release is made. All fees for inspection and release at the market shall be collected at the time the inspection or release is made by the state stock

inspector making the inspection or release and shall be sent by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector shall be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector shall be retained by him.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection shall receive a fee established by the department for each head inspected and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive a fee established by the department for each head inspected. All fees shall be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department unless paid to a deputy state stock inspector. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971; amd. Sec. 4, Ch. 247, L. 1973; amd. Sec. 108, Ch. 310, L. 1974; amd. Sec. 4, Ch. 482, L. 1977; R.C.M. 1947, 46-804; amd. Sec. 3, Ch. 235, L. 1979; amd. Sec. 2, Ch. 298, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 444, L. 1983; amd. Sec. 4, Ch. 166, L. 1989.

81-3-206. Commissioners to designate places for loading livestock for inspection. The board of county commissioners must, at the request of the department, designate within their respective counties certain convenient places and provide suitable facilities for unloading and loading of livestock for inspection purposes.

History: En. Sec. 1, Ch. 74, L. 1939; amd. Sec. 1, Ch. 211, L. 1947; amd. Sec. 101, Ch. 310, L. 1974; R.C.M. 1947, 46-709.

81-3-207 through 81-3-209 reserved.

81-3-210. Bill of sale required to prove ownership. (1) A bill of sale signed by the seller and adequately describing the livestock sold must be presented to the livestock inspector whenever the change of ownership inspection required by 81-3-211 is made or whenever a buyer of livestock requests a county-line or state-line inspection for livestock. The bill of sale shall be in a form prescribed by the department and shall be taken up by the department with the certificate of inspection acting as a receipt.

(2) The department shall establish, charge, and receive a fee for each copy of a bill of sale requested after the original bill of sale has been taken up. Fees

so received shall be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

History: En. Sec. 1, Ch. 80, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 444, L. 1983.

81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members are all members of the same family; or

(iv) any other entity owned solely by members of the same family.

(b) "Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, grandchildren, and the spouses of each.

(c) "Rodeo producer" means a person who produces or furnishes livestock that is used for rodeo purposes.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or a purchaser's agent to take possession of any livestock subject to title passing upon meeting or satisfaction of any conditions, unless the livestock have been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of the change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which livestock have not been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock has been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this

subsection will permit the movement of the released livestock directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, when inspection is required by this section, when a change of ownership has occurred, or when moved under a market consignment permit or a market release certificate, must have in the person's possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 must be extended to livestock transported or sold under the permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for the owner's personal use or business or if cattle are being transported from county to county in this state by their owner for show purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cattle described in the certificate. The permit becomes void upon any transfer of ownership or if the horse or cattle are to be removed from the state. If the permit is void, an inspection must be secured for removal and the endorsed certificate must be surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit, a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each horse. The application must contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each horse, and the permit is valid for the life of the horse. If there is a change of ownership in a horse, the permit automatically is void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. A permit is automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described in the certificate. The certificate is effective for the calendar year for which it is issued. The certificate must be issued by a state stock inspector.

(d) An owner of livestock or the owner's agent may be issued one transportation permit in a 12-month period allowing the movement of the livestock into an adjoining county and return when the livestock are being moved for grazing purposes and when they are being moved to and from land owned or controlled by the owner of the livestock or the owner's agent. The permit is valid for a period of 8 months from the date of issuance and must be issued by a state stock inspector. The permit may be issued only if the livestock are branded with the permittee's brand, which must be registered in Montana. The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971; amd. Sec. 1, Ch. 247, L. 1973; Sec. 46-801, R.C.M. 1947; amd. and redes. 46-801.2 by Sec. 102, Ch. 310, L. 1974; amd. Sec. 1, Ch. 316, L. 1975; amd. Sec. 1, Ch. 312, L. 1977; amd. Sec. 1, Ch. 482, L. 1977; R.C.M. 1947, 46-801.2; amd. Sec. 1, Ch. 190, L. 1979; amd. Sec. 4, Ch. 235, L. 1979; amd. Sec. 1, Ch. 10, L. 1981; amd. Sec. 1, Ch. 364, L. 1981; amd. Sec. 1, Ch. 17, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 10, Ch. 444, L. 1983; amd. Sec. 5, Ch. 166, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 380, L. 1995; amd. Sec. 2, Ch. 376, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 376 in (6)(a), near beginning of first sentence after "business or", substituted "if cattle are" for "where a purebred cow is"; in (6)(b), near end of second sentence and near middle of third sentence, after "state", inserted "stock inspector or a specially qualified deputy"; and made minor changes in style. Amendment effective April 24, 1997.

81-3-212. Exceptions. Section 81-3-211 does not apply to livestock:

(1) being transported through the state in interstate commerce without leaving the custody of the carrier;

(2) when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, or boat by the owner from one county to an adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

(3) when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, or boat by the owner from one county to an adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(4) when driven on the hoof from one county to an adjoining county within this state for the purpose of delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least 3 months;

(5) from one county to be consigned to, and which actually reaches, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector and for which a market consignment permit has been obtained in a manner provided by law;

(6) being transported to a veterinarian for health treatment and returned to their original premises if certification of treatment by the attending veterinarian accompanies the livestock on their return.

History: En. 46-801.3 by Sec. 104, Ch. 310, L. 1974; R.C.M. 1947, 46-801.3; amd. Sec. 6, Ch. 166, L. 1989.

Cross-References

Restriction on contractual time limitations for notification of injury to transported livestock, 69-14-216.

81-3-213. Inspection of livestock removed from state. Except as provided for in 81-3-212(1) and 81-3-211(4) and (6)(b), nothing contained in this part authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this part.

History: En. 46-801.4 by Sec. 105, Ch. 310, L. 1974; amd. Sec. 2, Ch. 482, L. 1977; R.C.M. 1947, 46-801.4; amd. Sec. 5, Ch. 235, L. 1979; amd. Sec. 7, Ch. 166, L. 1989.

81-3-214. Entry permit. A transportation permit for the entry of livestock into Montana must be obtained by the owner or his agent from a state stock inspector prior to the entry of the livestock into Montana. The department shall establish a fee for the permit, to be remitted by the department to the state treasury for credit to the state special revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this section.

History: En. 46-801.5 by Sec. 2, Ch. 41, L. 1977; R.C.M. 1947, 46-801.5; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 11, Ch. 444, L. 1983; amd. Sec. 8, Ch. 166, L. 1989.

81-3-215. Inspection of dead animals in feedlots. When a stock animal dies in a feedlot, the feedlot operator shall notify the board of livestock or its representative of the death. The operator may not dispose of the carcass until a livestock inspector has observed it and determined the brand of the owner of the animal. A livestock inspector observing a dead stock animal pursuant to this section shall, within 48 hours, send written notification to the owner of the animal.

History: En. Sec. 2, Ch. 32, L. 1974; R.C.M. 1947, 46-239.2.

81-3-216. Repealed. Sec. 29, Ch. 444, L. 1983.

History: En. Sec. 1, Ch. 162, L. 1979.

81-3-217 through 81-3-220 reserved.

81-3-221. Brands fraudulently changed. Whenever a mark or brand upon any neat cattle, horse, or other animal has been fraudulently altered, obliterated, or defaced so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill the animal to ascertain the mark or brand so altered or defaced.

Payment equal to the fair market value of the live animal shall be made after proper ownership is determined.

History: En. Sec. 2974, Pol. C. 1895; re-en. Sec. 1801, Rev. C. 1907; re-en. Sec. 3314, R.C.M. 1921; re-en. Sec. 3314, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1977; R.C.M. 1947, 46-706.

81-3-222. Compensation for animals killed. The value of the animal taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized. The amount of money awarded to the owner is full compensation for the loss of the animal. All money disbursed under this section shall be paid out of the department's funds in the state special revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash and the proceeds turned into the fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R.C.M. 1921; re-en. Sec. 3315, R.C.M. 1935; amd. Sec. 92, Ch. 147, L. 1963; amd. Sec. 100, Ch. 310, L. 1974; R.C.M. 1947, 46-707; amd. Sec. 1, Ch. 277, L. 1983.

81-3-223. Action by dissatisfied owner — costs. Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against the department or, if the animal is seized by a sheriff, against that sheriff's county, and should he fail to recover damages in any greater amount than that allowed under 81-3-222, he shall bear all costs that may be incurred in the maintenance of the action.

History: En. Sec. 2976, Pol. C. 1895; re-en. Sec. 1803, Rev. C. 1907; re-en. Sec. 3316, R.C.M. 1921; re-en. Sec. 3316, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1977; R.C.M. 1947, 46-708.

81-3-224 through 81-3-230 reserved.

81-3-231. Penalties. (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (5) of this section if he removes livestock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit;

(d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (5) of this section.

(3) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, a transportation permit, or a market release certificate has been issued and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, transportation permit, or market

release certificate as issued for the livestock, or who, having the certificate of inspection, market consignment permit, transportation permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection (5) of this section.

(4) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (5) of this section.

(5) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months or both fined and imprisoned. Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% shall be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963; amd. Sec. 109, Ch. 310, L. 1974; amd. Sec. 5, Ch. 482, L. 1977; R.C.M. 1947, 46-806; amd. Sec. 2, Ch. 14, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 9, L. 1985; amd. Sec. 53, Ch. 557, L. 1987; amd. Sec. 9, Ch. 166, L. 1989; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-3-232. Penalty for noninspection of dead animal in feedlot. A feedlot operator who violates 81-3-215 is guilty of a misdemeanor and on conviction shall be subject to imprisonment for not more than 6 months or a fine of not more than $500, or both.

History: En. Sec. 3, Ch. 32, L. 1974; R.C.M. 1947, 46-239.3.

81-3-233. Penalty for removal of livestock from state without inspection — exception. Any person, other than the owner or his agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the same inspected where such inspection is required by law is guilty of a felony and shall be punished by a fine of not more than $2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both such fine and imprisonment. The provisions of this section do not apply to any person who removes from this state any animal specified by this section for the purpose of obtaining emergency treatment for such animal by a licensed veterinarian.

History: En. Sec. 1, Ch. 173, L. 1961; amd. Sec. 28, Ch. 12, L. 1977; R.C.M. 1947, 46-808.

CHAPTER 4

CONTAINMENT OF LIVESTOCK

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Part 1
Fences

81-4-101. Legal fences defined. Any one of the following, if not less than 44 inches or more than 48 inches in height, shall be a legal fence in the state of Montana:

(1) all fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more

stays or pickets are used equidistant between posts. All corral fences which are used exclusively for the purposes of enclosing stacks which are situated outside of any lawful enclosure shall not be less than 16 feet from such stack so enclosed and shall be substantially built with posts not more than 8 feet distant from each other and not less than five strands of well-stretched barbed wire and shall not be less than 5 or more than 6 feet high. Any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

(2) all fences constructed of any standard woven wire not less than 28 inches in height, securely fastened to substantial posts not more than 30 feet apart, provided that two equidistant barbed wires shall be placed above the same at a height of not less than 48 inches from the ground;

(3) all other fences made of barbed wire, which shall be as strong and as well calculated to protect enclosures as those above described;

(4) all fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart, provided that, if leaning posts are used, there shall be a pole or wire fastened securely on the inside of the leg or support of such leaning post;

(5) all rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass.

History: En. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919; re-en. Sec. 3374, R.C.M. 1921; re-en. Sec. 3374, R.C.M. 1935; R.C.M. 1947, 46-1401.

Cross-References

Regulation of stable location, 7-21-4204.

Failure to close gates — criminal mischief, 45-6-101.

Mutual obligation of adjoining landowners, 70-16-205.

Fence-out requirement, 76-16-322.

Liability of stockowners for trespass, 81-4-215.

81-4-102. Construction of auto pass not to deprive legal fence of character. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

History: En. Sec. 3, Ch. 153, L. 1933; re-en. Sec. 4486.3, R.C.M. 1935; R.C.M. 1947, 16-1129.

81-4-103. Civil liability. Any person constructing or maintaining any fence of any kind not described in 81-4-101 is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3251, Pol. C. 1895; re-en. Sec. 2083, Rev. C. 1907; re-en. Sec. 3375, R.C.M. 1921; re-en. Sec. 3375, R.C.M. 1935; R.C.M. 1947, 46-1402.

81-4-104. Barbed wire fences to be kept in repair. The owners of barbed wire fences must keep the same in repair, and any person receiving notice in writing that his barbed wire fence or any part thereof is down or in such condition as to be likely to injure any livestock and fails or refuses to repair such fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals which may be injured by coming into contact with the fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3252, Pol. C. 1895; re-en. Sec. 2084, Rev. C. 1907; re-en. Sec. 3376, R.C.M. 1921; re-en. Sec. 3376, R.C.M. 1935; R.C.M. 1947, 46-1403.

81-4-105. Fallen wire fencing declared nuisance — abatement. All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock and a menace to any person riding or walking over the same is declared to be a public nuisance and subject to abatement in the manner hereinafter provided.

History: En. Sec. 1, Ch. 84, L. 1927; re-en. Sec. 3376.1, R.C.M. 1935; R.C.M. 1947, 46-1404.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Action to abate public nuisance, 45-8-112.

81-4-106. Notice to owner to repair fence — duty of county commissioners. Upon ascertaining the existence in the county of any nuisance specified in 81-4-105, the board of county commissioners shall notify by registered or certified mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within 60 days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by 81-4-107.

History: En. Sec. 2, Ch. 84, L. 1927; re-en. Sec. 3376.2, R.C.M. 1935; R.C.M. 1947, 46-1405.

81-4-107. Procedure when owner unknown or not resident of state — sale of wire removed. If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.

History: En. Sec. 3, Ch. 84, L. 1927; re-en. Sec. 3376.3, R.C.M. 1935; amd. Sec. 50, Ch. 12, L. 1977; R.C.M. 1947, 46-1406.

Cross-References

Manner of sale of county property, Title 7, ch. 8, part 22.

81-4-108. Disposal of proceeds of sale of wire after payment of expense. The proceeds of such sale shall be used to defray the cost of collecting and selling said wire, and the balance, if any, shall be placed by the county treasurer in a special fund and shall be held by him subject to claim by any person establishing to the satisfaction of the board of county commissioners that he was the lawful owner of said wire and entitled to the remaining proceeds of such sale. If no person claims said money within 1 year of the date of sale, the same shall be deposited in the general fund of the county.

History: En. Sec. 4, Ch. 84, L. 1927; re-en. Sec. 3376.4, R.C.M. 1935; R.C.M. 1947, 46-1407.

Part 2
Animals Unlawfully Running at Large

Part Cross-References

Grazing of livestock on highways, Title 60, ch. 7, part 2.

81-4-201. Animals running at large. It is unlawful for an owner or person in control of swine, sheep, llamas, alpacas, bison, ostriches, rheas, emus, or goats to willfully permit the animals to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393, R.C.M. 1921; re-en. Sec. 3393, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1945; R.C.M. 1947, 46-1704; amd. Sec. 10, Ch. 166, L. 1989; amd. Sec. 5, Ch. 417, L. 1993; amd. Sec. 9, Ch. 206, L. 1995.

81-4-202. Penalties. (1) Any person violating 81-4-201 is guilty of a misdemeanor and upon conviction shall be fined not more than $500 and is liable for damages to any party injured by the violation, in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section, except those collected in a justice's court, must be paid into the county treasury for the use and benefit of the public schools.

History: (1)En. Sec. 1166, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907; re-en. Sec. 3394, R.C.M. 1921; re-en. Sec. 3394, R.C.M. 1935; Sec. 46-1705, R.C.M. 1947; (2)En. Sec. 1167, Pen. C. 1895; re-en. Sec. 8840, Rev. C. 1907; re-en. Sec. 3395, R.C.M. 1921; re-en. Sec. 3395, R.C.M. 1935; Sec. 46-1706, R.C.M. 1947; R.C.M. 1947, 46-1705, 46-1706; amd. Sec. 54, Ch. 557, L. 1987; amd. Sec. 1, Ch. 8, L. 1993.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-4-203. Open range defined. In 81-4-204, 81-4-207, and 81-4-208, the term "open range" means all lands in the state of Montana not enclosed by a fence of not less than two wires in good repair. The term "open range" includes all highways outside of private enclosures and used by the public whether or not the same have been formally dedicated to the public.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

Cross-References

Fencing of open range, Title 60, ch. 7, part 1.

81-4-204. Male equine animals not to run on open range. It shall be unlawful for any owner, person, firm, corporation, or association having the management or control of any stallion, ridgeling, unaltered male mule, or jackass over the age of 1 year to permit or suffer such animal to run at large on the open range.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

81-4-205. Male equine animals running at large as nuisance — abatement. Any such animal so running at large is a public nuisance, which, in addition to the means and proceedings prescribed by this part for its abatement and removal, may be abated and removed by the means and proceedings provided by law for the abatement or removal of public nuisances.

History: **En. Sec. 2, Ch. 63, L. 1925; amd. Sec. 2, Ch. 85, L. 1931; re-en. Sec. 3400.2, R.C.M. 1935; amd. Sec. 52, Ch. 12, L. 1977; R.C.M. 1947, 46-1708.**

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Procedure for abatement and removal of public nuisances, 45-8-112.

81-4-206. Killing animal to prevent injury not prohibited. Sections 81-4-203 through 81-4-209 are not intended and shall not be interpreted or understood to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

History: **En. Sec. 5, Ch. 63, L. 1925; amd. Sec. 5, Ch. 85, L. 1931; re-en. Sec. 3400.5, R.C.M. 1935; R.C.M. 1947, 46-1711.**

81-4-207. Castration of animals running at large — notice to owner — expense and charges. (1) Any person may take up and secure any such animal found running at large on the open range. After taking it up he shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by him or his agent to the effect that the animal, describing it by marks and brands (if any), color, and sex, was taken up on the day named while it was running at large on the open range in the county (naming the county) and that, unless claimed and removed within 5 days next after the date of the posting, the animal will be castrated at the expense of the owner thereof. Should the owner, person, firm, corporation, or association having management or control of such animal be known to the person who took the animal up, personal service of such notice upon the owner, person, firm, corporation, or association having management or control of the animal shall be the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days next after the date of the notice served personally, the animal will be castrated at the expense of the owner thereof.

(2) If such animal so taken up be not claimed and removed within said 5 days or said 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration shall be paid by the owner. If such animal be claimed within the time herein prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of the keeping and feed thereof since it was taken up and also the sum of $5 for the taking up and giving of the notice aforementioned. Upon making such payments the claimant shall immediately remove and take away said animal.

History: **En. Sec. 3, Ch. 63, L. 1925; amd. Sec. 3, Ch. 85, L. 1931; re-en. Sec. 3400.3, R.C.M. 1935; R.C.M. 1947, 46-1709.**

81-4-208. Killing of animal running at large — notice — posting and service. (1) If any such animal so running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it shall take the animal off the open range and restrain it from running at large thereon within 10 days next after the giving of notice as hereinafter provided. The notice shall be signed by one or more taxpayers of the vicinity of the range whereon such animal be at large and be substantially as follows:

"To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in .... County, Montana. Unless said animal be removed therefrom and restrained from running at large on open range, within 10 days next after the date of this notice, it will be killed.

(Date) (Signature or signatures)"

(2) The notice shall be posted at the post office nearest the place where the animal was last seen on the range and like notices in two other of the most public places in the vicinity of said range, and like notice shall at once be mailed to the owner or person having management or control of the animal, if his name and address be known.

History: En. Sec. 4, Ch. 63, L. 1925; amd. Sec. 4, Ch. 85, L. 1931; re-en. Sec. 3400.4, R.C.M. 1935; R.C.M. 1947, 46-1710.

81-4-209. Penalty for violations. An owner, person, firm, corporation, or association violating any provisions of 81-4-203 through 81-4-209 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 6, Ch. 63, L. 1925; amd. Sec. 6, Ch. 85, L. 1931; re-en. Sec. 3400.6, R.C.M. 1935; R.C.M. 1947, 46-1712; amd. Sec. 1, Ch. 92, L. 1995.

81-4-210. Only purebred bulls to run at large — limitation on time. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a purebred bull of a recognized beef type; and no bull shall be turned upon or allowed to run at large upon any such public highways, open range, or national forest reserve between December 1 and June 1 of each and every year.

History: En. Sec. 1, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3403, R.C.M. 1921; amd. Sec. 1, Ch. 53, L. 1925; re-en. Sec. 3403, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1943; R.C.M. 1947, 46-1716.

81-4-211. Female breeding cattle, purebred bull to accompany. (1) Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon the range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months or more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. Any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by 81-4-210 through 81-4-213 must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in 81-4-210 through 81-4-213, shall be a purebred bull selected by a committee of permittees.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3404, R.C.M. 1921; re-en. Sec. 3404, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1957; amd. Sec. 53, Ch. 12, L. 1977; R.C.M. 1947, 46-1717.

81-4-212. Castration of violating bulls. Any bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding such a bull, provided any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person, and if the owner of such bull does not take possession of said bull within 24 hours after being notified, the party holding such bull may castrate him.

History: En. Sec. 4, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3406, R.C.M. 1921; re-en. Sec. 3406, R.C.M. 1935; R.C.M. 1947, 46-1719.

81-4-213. Penalty. Any person or persons, firm, company, or corporation violating any of the provisions of 81-4-210 through 81-4-213 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3405, R.C.M. 1921; re-en. Sec. 3405, R.C.M. 1935; R.C.M. 1947, 46-1718; amd. Sec. 2, Ch. 92, L. 1995.

81-4-214. Branding animals running at large — running irons prohibited. Every person except an owner, and the owner only when branding on the owner's own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year and every person who shall at any time brand or cause to be branded or marked any horse, mule, cattle or head of cattle, sheep, llama, alpaca, bison, swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron must be of the same design as the brand or mark owned by the party using it, or who marks or brands or causes to be marked or branded any of the animals listed in this section with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles, is punishable by imprisonment in the county jail for not exceeding 6 months or by a fine of not less than $25 or more than $500, or both.

History: En. Sec. 1189, Pen. C. 1895; re-en. Sec. 8863, Rev. C. 1907; re-en. Sec. 11553, R.C.M. 1921; re-en. Sec. 11553, R.C.M. 1935; Sec. 94-3522, R.C.M. 1947; redes. 46-1720 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-1720; amd. Sec. 11, Ch. 166, L. 1989; amd. Sec. 6, Ch. 417, L. 1993.

Cross-References

Illegal branding or altering or obscuring of brand, 45-6-327.

Recording of brands required, 81-3-102.

81-4-215. Liability of owners of stock for trespass. If any cattle, horses, mules, asses, hogs, sheep, llamas, alpacas, bison, or other domestic animals break into any enclosure and the fence of the enclosure is legal, as provided in 81-4-101, the owner of the animals is liable for all damages to the owner or occupant of the enclosure. This section may not be construed to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

History: En. Sec. 1119, 5th Div. Comp. Stat. 1887; re-en. Sec. 3258, Pol. C. 1895; re-en. Sec. 2090, Rev. C. 1907; re-en. Sec. 3378, R.C.M. 1921; re-en. Sec. 3378, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1977; R.C.M. 1947, 46-1409; amd. Sec. 12, Ch. 166, L. 1989; amd. Sec. 7, Ch. 417, L. 1993.

81-4-216. Damage to planted trees. In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than 5 feet.

History: En. Sec. 3281, Pol. C. 1895; re-en. Sec. 2096, Rev. C. 1907; re-en. Sec. 3377, R.C.M. 1921; re-en. Sec. 3377, R.C.M. 1935; R.C.M. 1947, 46-1408.

81-4-217. Retention of trespassing stock. (1) If an animal breaks into an enclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the enclosure or premises may take into possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into possession shall, within 24 hours after taking possession, give written notice to the owner or person in charge of the animal, stating that the animal has been taken. The notice must also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description, either by legal subdivisions or other general description, of the location of the premises on which the animal is held.

(2) The notice must be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice must be mailed to the owner. In this case or if the owner is unknown, a similar notice must be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known to the sheriff. If unknown, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days after receipt of the notice do not agree to the amount of damages, the claimant shall within 10 days institute a civil action to collect the claim in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by the person taking the stock. The owner or person in charge of the animal may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the claimant of all sums, including costs that may be recovered by the claimant, have all livestock returned. The claimant is liable to the owner for any loss or injury to the stock occurring through the claimant's fault or neglect. If the claimant fails to recover in the action a sum equal to that offered by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in the claimant's possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without the consent of the person taking the animal, is guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en.

Sec. 3379, R.C.M. 1921; re-en. Sec. 3379, R.C.M. 1935; amd. Sec. 146, Ch. 310, L. 1974; amd. Sec. 51, Ch. 12, L. 1977; R.C.M. 1947, 46-1410; amd. Sec. 1, Ch. 35, L. 1983; amd. Sec. 3, Ch. 92, L. 1995.

81-4-218. Marking land and mining claims in national forest. It shall be the duty of the owner or the person holding possessory right to all unfenced lands or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana or which lie on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R.C.M. 1921; re-en. Sec. 3380, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1963; R.C.M. 1947, 46-1411.

Cross-References

Manner of locating claim, 82-2-101.

81-4-219. Method of marking. For the purposes of 81-4-218 through 81-4-220, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

History: En. Sec. 2, Ch. 222, L. 1921; re-en. Sec. 3381, R.C.M. 1921; re-en. Sec. 3381, R.C.M. 1935; R.C.M. 1947, 46-1412.

Cross-References

Manner of locating claim, 82-2-101.

81-4-220. Marking — right of action against trespassing stock. No person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of 81-4-218 through 81-4-220, shall have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven or whether said livestock were herded or driven on said land, provided that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to. In no event shall damages other than nominal damages be assessed against said trespass unless the landowner or his duly authorized agent shall, within 6 months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R.C.M. 1921; amd. Sec. 1, Ch. 78, L. 1927; re-en. Sec. 3382, R.C.M. 1935; amd. Sec. 2, Ch. 31, L. 1963; R.C.M. 1947, 46-1413.

Cross-References

Definition of enter or remain unlawfully, 45-6-201.

Part 3

Herd Districts

81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana upon petition of owners or possessors of 55% of the land in such district and providing 25% or more of the land in such district is in actual cultivation or being used for residential purposes. Such districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and such territory so to be created in a herd district has a suburban population of not less than 200 people.

(2) In formation of such a district the entire holding of any owner or lessee must be included unless such owner or lessee consents that less than his entire contiguous holdings be included in the petition.

(3) Such petition shall designate the months of the year when the herd district is effective, and upon presentation and filing of such petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to such notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but such district shall be established only in such manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of such district. It is not required that the boundaries of any district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.

(4) Should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four weekly publications in some newspaper nearest the district of the creation of such districts, also stating the period such districts will be in effect. Such districts shall not be in effect until 30 days have expired after the order.

(5) Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest and the board of county commissioners shall remove the name of the lessee from said petition, and no

person shall be permitted to withdraw his name after the hour set for hearing same.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(a); amd. Sec. 1, Ch. 488, L. 1979.

81-4-302. Dissolution. (1) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district and that less than 25% of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for 3 successive weeks in some newspaper of general circulation in the county.

(2) At the time fixed for hearing, the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved and that less than 25% of the lands included in such district are in actual cultivation, then the board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the herd district is thereby dissolved. Forthwith, upon the making and entry of any such order aforesaid, the herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(b).

81-4-303. Exclusion of government land. Any tract of land embraced within any established herd district and which contains 18 sections of government land or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice, and hearing and by a like order as in the case of proceedings for dissolving herd districts. When the exclusion of any such tract of land from an existing herd district is sought, the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of 55% or more of the lands lying within the boundaries of the tract to be excluded and that less than 15% of the lands included in such tract is in actual cultivation. In any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true, its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition, which shall be further set forth with common certainty in the order, is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(c).

81-4-304. Joint herd districts. Herd districts may be created jointly between any two or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(d).

81-4-305. Changing time when herd districts will be in effect — petition — notice — hearing. The time of year or period when any herd district heretofore or hereafter created under the provisions of the laws of this state is effective or will be in effect may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county a petition signed by the owners or possessors of 55% of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by posting five notices of hearing in five public places in the county, one of which shall be at the place such hearing is to be held and at least two of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four weekly publications in some newspaper in the county nearest such district, stating the period such district will be in effect. The change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice, such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

History: En. Sec. 1, Ch. 78, L. 1931; re-en. Sec. 3389.1, R.C.M. 1935; R.C.M. 1947, 46-1507.

81-4-306. Penalty for permitting animals to run at large in herd districts. (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats, who willfully permits the animals to run at large within any herd district, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that each five head or less of horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats are willfully permitted to run at large constitutes a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully permits the animal to run at large within any herd district is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that a bull is permitted to run at large constitutes a separate offense.

History: En. Ch. 74, L. 1917; amd. Sec. 3, Ch. 167, L. 1919; re-en. Sec. 3385, R.C.M. 1921; amd. Sec. 1, Ch. 45, L. 1925; re-en. Sec. 3385, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1945; R.C.M. 1947, 46-1502; amd. Sec. 2, Ch. 488, L. 1979; amd. Sec. 13, Ch. 166, L. 1989; amd. Sec. 8, Ch. 417, L. 1993.

81-4-307. Trespassing animals in herd district — retention for damages and keep. (1) If any such animal or animals wrongfully enter upon premises of any person within such district, the owner or person in control of such animal or animals shall be liable for care and feed and for any damages occasioned by such livestock to the landowner. The owner or occupant of the land upon which such wrongful entry is made may take into his possession such animal or animals and reasonably care for the same and may retain possession thereof and be entitled to a lien thereon as security for the payment of damages and charges occasioned by such livestock. If the owner of such livestock or the person entitled to the possession thereof can be found or is known to the person who takes it up for trespass, it shall be his duty to notify the owner, owners, or persons in charge thereof within 48 hours after taking possession thereof by a notice in writing, duly mailed as a registered or certified letter, directed to such owner or person in charge at his post-office address or by serving such notice on him personally. The notice shall give a particular description of the livestock and state the amount of damages claimed and demand that within 48 hours after receipt of such notice the damages and costs be paid and that the animal or animals be taken away from the property of the complainant.

(2) Upon demand and upon payment of the damages and charges, the owner or occupant of the land shall release and deliver possession of such stock to the owner or person entitled thereto. If the parties cannot agree upon the amount, then the owner or person entitled to said stock shall give a receipt to the owner or occupant of the land having possession of the same, which receipt shall fully describe the animal or animals so that they may at any time be easily identified, and thereupon the owner or occupant of the land shall give

possession of such livestock to the owner or person entitled thereto, making claim therefor. The owner or person so receiving possession of such livestock shall not dispose of the same but shall retain and keep the same in his possession as the legal custodian thereof in order to meet and pay the amount of the lien thereon for damages and charges due in consequence of any such trespass.

(3) The party entitled to such damages or charges shall within 10 days after delivery of possession of such livestock commence an action in any court having jurisdiction to recover such damages and charges, and such livestock shall be held for the payment of any judgment as effectually as though held under a writ of attachment. At any time after such action is commenced, the owner or person entitled to the stock, to whom delivery of possession was made, may furnish and file a bond conditioned to pay the damages, charges, and costs incurred in the action, and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the livestock shall thereupon be discharged.

(4) If the owner or person entitled to such livestock does not furnish such a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the stock to satisfy any judgment which may be recovered in the action, and such stock, when so taken possession of by the officer, shall be held, treated, and sold under execution the same as though seized and held in the first instance by writ of attachment.

(5) The owner or person entitled to the stock may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment which may be recovered in such action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to the livestock, after delivery of possession to him without payment of damages and charges herein provided for, shall sell or dispose of the same or any part thereof or permit the same to be taken from his possession or shall in any manner prevent the seizure of the same by the constable or sheriff, as herein provided, before the lien thereon is fully discharged, he shall be guilty of a misdemeanor and in addition thereto shall be liable to the party entitled to such damages and charges in double the value of the stock. At the time of delivery or possession of such stock [to] the owner or person entitled thereto, a written statement of the amount of the damages and charges shall be furnished to the owner or person entitled to the possession of the stock by the person claiming such damages and charges.

(6) If the owner or claimant of such stock is not known to the person taking up such stock, he shall give notice thereof within 48 hours by posting a notice at the nearest post office and serving a like notice on the stock inspector of the district, which notice shall describe each animal or animals, the brand thereon, and give a minute description thereof, together with the date of the trespass.

History: En. Ch. 74, L. 1917; amd. Sec. 4, Ch. 167, L. 1919; re-en. Sec. 3386, R.C.M. 1921; amd. Sec. 1, Ch. 165, L. 1931; re-en. Sec. 3386, R.C.M. 1935; R.C.M. 1947, 46-1503.

Cross-References

Writ of attachment, Title 27, ch. 18.

Definition of enter or remain unlawfully, 45-6-201.

Penalty for misdemeanor, 46-18-212.

81-4-308. Retrieval of impounded animals a misdemeanor — penalty. Any person who takes or rescues any animal impounded as provided in 81-4-307 from the possession of the person in whose custody the same may be, without his consent, shall be guilty of a misdemeanor and upon conviction therefor be subject to a fine of not less than $100 or more than $500 or shall be confined in the county jail not more than 60 days or both such fine and imprisonment.

History: En. Sec. 6, Ch. 167, L. 1919; re-en. Sec. 3388, R.C.M. 1921; re-en. Sec. 3388, R.C.M. 1935; R.C.M. 1947, 46-1505; amd. Sec. 3, Ch. 488, L. 1979.

81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty. Any person not the owner or person in charge of any livestock who causes any livestock to enter any herd district established under the provisions of 81-4-301 through 81-4-309 is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not less than $250 or more than $500 or confinement in the county jail not less than 60 days or both such fine and imprisonment and is liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved constitutes a separate offense.

History: En. Sec. 7, Ch. 167, L. 1919; re-en. Sec. 3389, R.C.M. 1921; re-en. Sec. 3389, R.C.M. 1935; R.C.M. 1947, 46-1506; amd. Sec. 3, Ch. 14, L. 1979; amd. Sec. 4, Ch. 488, L. 1979.

81-4-310 through 81-4-320 reserved.

81-4-321. Definition. The term "horses" when used in 81-4-321 through 81-4-328 shall include any mare, gelding, stallion, colt, foal, filly, mule, jack, and jenny.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).

81-4-322. Horse herd districts — size — location — petition — notice and hearing — abolishment. (1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of such district. Such district shall contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. Such petition shall designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers thereof, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county upon receipt thereof shall set a date for hearing protests and verification of signatures thereto and shall give not less than 20 days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district. Should it appear to such county commissioners, after such hearing, that the signatures attached to such petition were genuine, they shall immediately make an order declaring such horse herd district created and established, after which the county commissioners must give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when such horse herd district will be in effect and when such

district shall not be in effect. Such order shall not be effective until 30 days have expired after the order.

(3) Such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 shall be paid by the petitioners, and no part thereof shall be paid by the county.

(5) Upon petition of any owner or possessor of land lying contiguous and adjoining any herd district heretofore created and upon like hearing and notice as hereinabove provided for, such lands shall be included in such herd district and become a part thereof.

(6) Should the signature of a lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

History: En. Sec. 1, Ch. 119, L. 1931; amd. Sec. 1, Ch. 57, L. 1933; re-en. Sec. 3389.2, R.C.M. 1935; R.C.M. 1947, 46-1601.

81-4-323. Petition to dissolve horse herd district — hearing and notice — order of county commissioners. When a petition praying that any established horse herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district, the county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week, for 3 successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Sec. 4A, Ch. 119, L. 1931; re-en. Sec. 3389.6, R.C.M. 1935; R.C.M. 1947, 46-1605.

81-4-324. Horses running at large in herd district prohibited. All horses are hereby prohibited from running at large within any horse herd district as defined in 81-4-322.

History: En. Sec. 2, Ch. 119, L. 1931; re-en. Sec. 3389.3, R.C.M. 1935; R.C.M. 1947, 46-1602.

81-4-325. Penalty and liability for horses wrongfully entering on premises in horse herd district. If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of 81-4-309 and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.

History: En. Sec. 3, Ch. 119, L. 1931; re-en. Sec. 3389.4, R.C.M. 1935; R.C.M. 1947, 46-1603.

81-4-326. Retention and sale of horses for damages and care — procedure. (1) The owner or occupant of the land upon which such wrongful entry is made may take into his possession such horse or horses and shall reasonably care for the same while in his possession and may retain possession of said horse or horses and shall have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said horse or horses while in his possession. The person taking up said horse or horses shall within 48 hours after taking possession thereof notify said owner, owners, or persons in charge thereof by a notice in writing, describing said horse or horses taken up, including marks and brands, if any, the amount of damages claimed, and the charge per head per day for caring for and feeding the same, and describing, either by legal subdivisions or other general description, the location of the premises upon which said horse or horses are held and requiring him within 48 hours after receiving said notice to take the said horse or horses away after making full payment for all damages and costs of said horse or horses. Such notice shall be given by personal service on the said owner, owners, or person in charge thereof or by leaving said notice at his usual place of residence with some member of his family over the age of 14 years or by sending said notice by prepaid registered or certified mail addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of such horse or horses to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or person in control of such horse or horses, as hereinbefore provided. If the owner or claimant of such horse or horses is not known to the person taking up such horse or horses or the said owner or claimant shall refuse to pay the amount of damages and charges as herein provided, the said person taking up such horse or horses shall, within 72 hours from the time said horse or horses were so taken up, deliver to the sheriff or a constable of the county in which the horse or horses were so taken up a statement containing the information required to be given in the notice hereinbefore set out, and in addition thereto, he shall mail by prepaid registered or certified mail a copy of said statement addressed to the nearest state livestock inspector. Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses so taken up.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(1), (2).

81-4-327. Sale of horses — disposition of proceeds. (1) Prior to such sale the sheriff shall have said horses classified as follows:

(a) Class 1 shall include:

(i) horses not bearing a registered brand and which in the opinion of the stock inspector are of a value not to exceed $10 per head; and

(ii) horses bearing a registered brand but which the owner has failed to redeem as herein provided, after notice given, and which in the opinion of the stock inspector are of a value not to exceed $10 per head.

(b) Class 2 shall include horses bearing registered brands and which in the opinion of the stock inspector are of a value in excess of $10 per head.

(2) Horses in class 1 shall be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in such county, one of which shall be in that portion of the district included in the county.

(3) Horses in class 2 shall be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and such notice shall likewise be published once a week for 2 successive weeks before said sale in some newspaper published in the county seat of each county including any part of said district, if there be such newspaper, and if there be no newspaper published in any county comprising a part of such district, then such notice shall be published in any newspaper of general circulation in the county or counties including such district. The notice required to be published for the sale of horses in class 2 shall describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale shall be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, shall be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund" (giving number of district if more than one).

(4) A separate fund, styled as above specified, shall be kept by the county treasurer for each of said districts created in his county. The county treasurer shall make a record of the description of each horse, the amount received for same, and the amount of deductions, which record shall be open to public inspection; and any person making claim of ownership of such horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse which shall not be so claimed within 1 year after such sale shall at the expiration of said period be transferred to the general fund of the county.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).

81-4-328. Liability of officers. No officer, board, or employee of any county or any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under 81-4-321 through 81-4-327, and all such acts shall be presumed to have been in good faith and in conformity with 81-4-321 through 81-4-327.

History: En. Sec. 5, Ch. 119, L. 1931; re-en. Sec. 3389.7, R.C.M. 1935; R.C.M. 1947, 46-1606.

Cross-References

Liability exposure, Title 2, ch. 9.

Part 4

Impoundment of Livestock in Municipalities

81-4-401. Certain livestock not to run at large in municipalities. Horses, cattle, mules, sheep, llamas, alpacas, bison, goats, or swine may not be allowed to run at large in any incorporated city or town.

History: En. Sec. 1, Ch. 65, L. 1917; re-en. Sec. 3401, R.C.M. 1921; re-en. Sec. 3401, R.C.M. 1935; R.C.M. 1947, 46-1714; amd. Sec. 14, Ch. 166, L. 1989; amd. Sec. 9, Ch. 417, L. 1993.

81-4-402. Punishment for permitting trespass of livestock. Any person owning livestock or having in charge any horses, mules, cattle, sheep, llamas, alpacas, bison, goats, or swine who willfully and unlawfully permits the livestock to trespass in violation of any of the provisions of 81-4-401 is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

History: En. Sec. 2, Ch. 65, L. 1917; re-en. Sec. 3402, R.C.M. 1921; re-en. Sec. 3402, R.C.M. 1935; R.C.M. 1947, 46-1715; amd. Sec. 15, Ch. 166, L. 1989; amd. Sec. 10, Ch. 417, L. 1993.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-4-403. Impounding animals — duties of cities and towns. When any livestock or domestic animals of any kind are impounded, seized, restrained, or held by any city or town or its officers or agents, it shall be the duty of such city or town, its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained, or held by such city or town, if the owner is known, in the manner hereinafter provided.

History: En. Sec. 1, Ch. 161, L. 1921; re-en. Sec. 5175, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 46-2001.

Cross-References

Control of livestock in emergency road construction area, 7-14-2129.

81-4-404. Contents of notice. Said notice shall be in writing and shall give:

(1) the number, description, marks, and brands of such stock when impounded, seized, restrained, or held, with the reasons therefor;

(2) the amount of charges, if any, which shall be reasonable and in no case exceed the actual cost of holding and costs in event of sale; and

(3) what disposition will be made of said stock if such charges are not paid and when and where such disposition shall be made.

History: En. Sec. 2, Ch. 161, L. 1921; re-en. Sec. 5176, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1927; re-en. Sec. 5176, R.C.M. 1935; R.C.M. 1947, 46-2002.

81-4-405. Service upon owner. If such owner be known and if his post-office address shall be known as hereinbefore specified, such notice shall be served upon him or her personally.

History: En. Sec. 3, Ch. 161, L. 1921; re-en. Sec. 5177, R.C.M. 1921; re-en. Sec. 5177, R.C.M. 1935; R.C.M. 1947, 46-2003.

81-4-406. Service on department of livestock. If the owner is unknown or if the owner is known but his post-office address is unknown, the notice shall be served on the department of livestock.

History: En. Sec. 4, Ch. 161, L. 1921; re-en. Sec. 5178, R.C.M. 1921; re-en. Sec. 5178, R.C.M. 1935; amd. Sec. 157, Ch. 310, L. 1974; R.C.M. 1947, 46-2004.

81-4-407. Service by mail. Service of such notice may be made personally or by registered or certified mail, postage prepaid, properly addressed, and placed in the United States post office at least 8 days before the day fixed for the disposition of said stock.

History: En. Sec. 5, Ch. 161, L. 1921; re-en. Sec. 5179, R.C.M. 1921; re-en. Sec. 5179, R.C.M. 1935; R.C.M. 1947, 46-2005.

81-4-408. Duty of officers to ascertain brands. It shall be the duty of such city or town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked or the brand or marks are mutilated or undeterminable, such facts shall be noted in said notice.

History: En. Sec. 6, Ch. 161, L. 1921; re-en. Sec. 5180, R.C.M. 1921; re-en. Sec. 5180, R.C.M. 1935; R.C.M. 1947, 46-2006.

Cross-References

Recording of brands required, 81-3-102.

81-4-409. Department to ascertain owner — notice. When the notice is served, the department shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice. The department shall notify the city or town, its officers or agents, of the name and post-office address of the owner.

History: En. Sec. 7, Ch. 161, L. 1921; re-en. Sec. 5181, R.C.M. 1921; re-en. Sec. 5181, R.C.M. 1935; amd. Sec. 158, Ch. 310, L. 1974; R.C.M. 1947, 46-2007.

81-4-410. Provisions mandatory. The provisions hereof are mandatory, and the owner of such livestock will not lose title or right of possession to his stock unless the provisions hereof are strictly complied with.

History: En. Sec. 8, Ch. 161, L. 1921; re-en. Sec. 5182, R.C.M. 1921; re-en. Sec. 5182, R.C.M. 1935; R.C.M. 1947, 46-2008.

Part 5

Roundup of Abandoned Horses

81-4-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned horse" means a horse, mare, gelding, filly, jack, mule, or other animal of the genus equus, 1 year of age or over and unbranded or, if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this part, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.

(2) "Open range" means all lands in this state not enclosed by a fence. The term "open range" includes all highways outside of private enclosures and used by the public, whether the highways have been formally dedicated to the public or not.

(3) "Person" includes individuals, associations, persons, and corporations.

History: **En. Sec. 1, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.1, R.C.M. 1935; amd. Sec. 148, Ch. 310, L. 1974; R.C.M. 1947, 46-1801.**

81-4-502. Abandoned horses on public range declared public nuisance subject to condemnation — right of owner. It is unlawful for any person owning or having control of any horse to abandon the horse upon the open range in the state of Montana, and such horses so running at large upon the open range in the state are a public nuisance and a public menace and are condemned, subject to the right of the owner of any such abandoned horse to reclaim the same under the conditions hereinafter provided.

History: **En. Sec. 2, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.2, R.C.M. 1935; amd. Sec. 54, Ch. 12, L. 1977; R.C.M. 1947, 46-1802.**

Cross-References

Public nuisance, 45-8-111.

81-4-503. Roundup of abandoned horses — petition — expenses. (1) For the purpose of speedily clearing abandoned horses from the open range in any county or in any district thereof, the board of county commissioners of any such county must, upon the petition of at least five responsible property owners, inhabitants of the proposed roundup district engaged in the livestock business and paying taxes upon livestock in such county, or upon the petition of a reputable local livestock association, authorize a roundup of abandoned horses in any district within such county.

(2) Upon the filing of such petition, the board shall make an order authorizing such roundup, which order shall describe generally such district with reasonable certainty. Said district shall not include more or less territory than that described in the petition. Such order shall also specify the date on or within 10 days after which the roundup shall begin and shall designate the place within the district at which the headquarters of such roundup shall be maintained.

(3) Any such roundup shall be conducted in such manner as to cause as little disturbance as reasonably possible to horses running lawfully on the open range.

(4) All expense of any such roundup shall be paid by the petitioners at whose request the same is initiated, and no county officer or board shall have any power to expend any moneys of the county or incur any obligation on its behalf in connection with any such roundup. Such petitioners, however, shall be reimbursed for the expense of such roundup, as and when moneys may be available for that purpose in the abandoned horse fund, by warrants issued upon claims filed as in the case of other claims against the county.

History: **En. Sec. 3, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.3, R.C.M. 1935; R.C.M. 1947, 46-1803.**

81-4-504. Notice of holding roundup — publication — form. Notice of the roundup shall be given by the board of county commissioners at least 30 days before the date when the roundup begins. The notices shall be published at least once a week for 3 successive weeks in some newspaper of general circulation, printed and published in the county in which the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted in at least five public places outside of the county seat of the county on public highways in the county or district, as the case may be, in which the roundup is to be held. Three notices shall be posted in three public places in the county seat. One of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than 2 miles apart, and all posted notices are to be posted at least 20 days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and published in the county, publication in a newspaper is not required. At least 20 days before the date on which the roundup is to begin, a copy of the notice shall be filed with the department by the clerk of the board of county commissioners.

History: En. Sec. 4, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.4, R.C.M. 1935; amd. Sec. 149, Ch. 310, L. 1974; R.C.M. 1947, 46-1804.

81-4-505. Roundup foreman — duties — bond. (1) All roundups shall be under the control and supervision of the board of county commissioners of the county in which the same shall be held. Roundup districts shall be numbered in the order of their creation. Each roundup shall be conducted by some person designated by the board of county commissioners, whose official designation shall be "roundup foreman, ... roundup district, ... County, state of Montana".

(2) Such person shall maintain his headquarters at the place designated by the board of county commissioners in its order as the headquarters of such roundup. Such roundup foreman shall have power to administer oaths and affirmations in all matters coming within the scope of his official duties.

(3) The board of county commissioners shall require from such roundup foreman an official bond, in an amount not less than $2,500 and not to exceed $5,000, which bond shall be conditioned as official bonds of county officers and shall be subject to all provisions of law applicable to such bonds.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.5, R.C.M. 1935; R.C.M. 1947, 46-1805(part).

Cross-References

Bonds of county officers and employees, Title 2, ch. 9, part 7.

Official bonds of county officers, 7-4-2212.

81-4-506. Sale of abandoned horses. All abandoned horses taken up in any such roundup shall be delivered to the roundup foreman in charge of such roundup and shall be by him offered for sale at public auction and sold to the highest bidder for cash, if there be any bidder or bidders therefor, and any such abandoned horses so offered for sale and for which no bid is made shall be destroyed or otherwise disposed of in the discretion of the board of county commissioners, unless reclaimed as herein provided.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.5, R.C.M. 1935; R.C.M. 1947, 46-1805(part).

81-4-507. Gathering horses in roundup district before roundup unlawful — rights of owner. It shall be unlawful for any person or persons to round up from the range any horse or horses in any roundup district after such districts have been designated by the county commissioners until after such roundup. However, an owner of horses on which the taxes have been paid in this district may gather the same by notifying the roundup foreman and being accompanied by such foreman or a representative of such foreman in gathering such horses.

History: **En. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.16, R.C.M. 1935; R.C.M. 1947, 46-1815.**

81-4-508. Claim of owner — cost of keeping and feeding horses. Any person claiming to be the owner of any such abandoned horse or horses may serve written notice upon the roundup foreman in charge of such roundup of his claim of ownership, at any time before sale or other final disposition of such horse or horses. Such claim of ownership shall be verified by the oath of the claimant or someone on his behalf, and the sale or other final disposition of such horse or horses shall, as to such horse or horses, be postponed from time to time as may be necessary to enable the claimant to make proof of his claim as herein provided. Such postponement shall not be had unless the claimant shall pay to the roundup foreman in charge of such roundup or deliver to him satisfactory security for the estimated cost of keeping and feeding such horse or horses until sale or other final disposition or delivery to the owner.

History: **En. Sec. 6, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.6, R.C.M. 1935; R.C.M. 1947, 46-1806.**

81-4-509. Proof of ownership — payment of taxes and penalties — decision of commissioners on claim. Any person claiming any abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508, or within such further time as the board of county commissioners shall allow, upon good cause shown, submit to such board proof of his ownership and shall deposit with said board the amount of any unpaid taxes and penalties which may be assessed against such horse or horses, together with the sum of $5 roundup fee. The board shall decide all such cases in preference to all other matters coming before it and at the earliest possible moment. If the claim shall be allowed, the roundup foreman in charge of such roundup shall immediately be notified of such decision and he shall forthwith deliver such horse or horses as to which ownership shall be so proved to the owner upon payment of any amount due from such owner for the estimated cost of keeping and feeding such horse or horses as aforesaid. The deposit made by such owner of taxes, penalties, and roundup fee shall be delivered by the board to the county treasurer. If such board shall deny the claim of ownership, it shall forthwith notify the person in charge of such roundup of its decision and such horse or horses as to which such claim shall be denied shall be offered for sale at the earliest convenient session of the sales being held under such roundup, and if not sold, the same shall be destroyed or otherwise disposed of as though no claim had been presented.

History: **En. Sec. 7, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.7, R.C.M. 1935; R.C.M. 1947, 46-1807.**

Cross-References

Class six property — description — taxable percentage, 15-6-136.

81-4-510. Notice of sale of abandoned horses — form — time of sale — title. (1) Before any sale shall be had, at least 10 days' notice shall be given by publication and posting in the manner specified in 81-4-504, except that publication, if made in a newspaper, shall be once in each week for two successive weeks, and posting shall be done at least 5 days before the date of sale. Such notice shall be in substantially the following form:

NOTICE OF SALE OF ABANDONED HORSES

Notice is hereby given that on .... day, the .... day of ...., 19.., at .... in the county of ...., state of Montana, beginning at the hours of ....m., on said day the following described abandoned horses will be sold at public auction to the highest bidder for cash, to wit:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law and for which no bid is made at said sale will be destroyed or otherwise disposed of in the discretion of the board of county commissioners of .... County, state of Montana.

Dated the .... day of ...., 19...

By order of the board of county commissioners of .... County, Montana.

By ...., clerk of said board.

(2) All such sales shall be held between the hours of 8 a.m. and 6 p.m. and may be continued from time to time until all abandoned horses taken in such roundup shall have been disposed of. On payment of the price bid for any such horse or horses sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: En. Sec. 8, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.8, R.C.M. 1935; R.C.M. 1947, 46-1808.

81-4-511. Assessment of horses taken in roundup. Following a roundup held pursuant to this part, the department of revenue shall immediately assess all horses that have been taken up in a roundup and that may be sold or reclaimed before sale and not already assessed for the current year. The department of revenue shall transmit to the county treasurer a copy of each assessment made. Any horses that have escaped the assessment mentioned in 81-4-501 must be assessed as provided for in 15-8-306.

History: En. Sec. 9, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.9, R.C.M 1935; R.C.M. 1947, 46-1809; amd. Sec. 150, Ch. 27, Sp. L. November 1993.

Cross-References

How property assessed, Title 15, ch. 8, part 3.

81-4-512. Disposition of proceeds — abandoned horse fund — use of fund. All moneys paid by reclaiming owners of any such horse or horses shall be paid to the county treasurer and by him kept in a fund to be designated as the "abandoned horse fund, roundup district No. .... (giving number of district in which such horse or horses were rounded up)". A separate fund, styled as above specified, shall be kept by the county treasurer for each roundup district created in his county. All moneys received from the sale of any such horses shall be paid to the county treasurer, and if such sum received from the sale of any such horse shall not exceed the taxes, penalties, and the roundup fee, the whole thereof shall be immediately deposited in the abandoned horse fund for the district in which such horse or horses were rounded up. But if the sum received from the sale of any such horse shall exceed such taxes, penalties, and roundup fee, the amount of such taxes, penalties, and roundup fee shall be forthwith deposited in the abandoned horse fund for such district and the excess shall be kept by the treasurer in a separate fund, and he shall make a record of the description of such horse, the amount received for the same, and the amount of deductions for taxes, penalties, and roundup fee, which record shall be open to public inspection. Any person making claim to the board of county commissioners, at any time within 6 months from the date of sale, of ownership of such horse and submitting proof of ownership to such board with such claim, to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse in excess of taxes, penalties, and roundup fee, which shall not be so claimed within 6 months after such sale, shall at the expiration of said period become the property of such county and shall be transferred to the abandoned horse fund for the district in which any such horse was rounded up.

History: En. Sec. 10, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.10, R.C.M. 1935; R.C.M. 1947, 46-1810.

81-4-513. Report of roundup foreman — disposition of copies. The roundup foreman in charge of the roundup shall keep an accurate record of all proceedings under the order for the roundup. Within 30 days after the roundup is completed, the foreman shall prepare in triplicate and verify by oath a full, true, and accurate report of all the proceedings under the order for the roundup. The report must include a complete financial statement, the number and description of horses impounded, and the manner of disposition of the horses. One copy of the report must be filed with the clerk of the board of county commissioners, and the filing is notice of the contents of the report and prima facie proof of the facts stated in the report. One copy of the report must be filed with the department of revenue, and one copy must be filed with the county treasurer, for their information and appropriate action.

History: En. Sec. 11, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.11, R.C.M. 1935; R.C.M. 1947, 46-1811; amd. Sec. 151, Ch. 27, Sp. L. November 1993.

81-4-514. Transfer of moneys of abandoned horse fund to general fund. On November 30 of each year, the county treasurer shall, if all claims against any such abandoned horse fund are paid and a balance remains in such fund, transfer all moneys so remaining in such fund to the general fund of the county, subject to the usual division with the state as to any portion of such balance which shall consist of taxes collected on the abandoned horses. No part of the roundup fee of $5 shall be paid to the state. Any portion of the taxes so collected which shall be used in paying claims against said fund is hereby declared to be a part of the cost of collection of such taxes.

History: En. Sec. 12, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.12, R.C.M. 1935; R.C.M. 1947, 46-1812.

81-4-515. Liability of officers and employees. No officer, board, or employee of any county or any employee of any such officer or board shall be liable for any act performed in good faith in discharging official duties under this part. All such acts shall be presumed to have been in good faith and in conformity with this part.

History: En. Sec. 13, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1813.

Cross-References

Governmental entity to be joined as defendant — immunization, defense, and indemnification of employees, 2-9-305.

81-4-516. Limitation of powers or duties of officers. Except as provided in this part, this part may not be construed as limiting the powers or duties of the department of revenue, county treasurers, or other boards or officers.

History: En. Sec. 14, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1814; amd. Sec. 152, Ch. 27, Sp. L. November 1993.

Part 6

Estrays

Part Cross-References

Control of animals running at large, 7-23-4101.

Livestock on highways, Title 60, ch. 7.

Duties of livestock market operator when stock ownership in doubt, 81-8-263.

81-4-601. Estray defined. In this part, "estray" means a horse, mule, mare, gelding, colt, llama, alpaca, bison, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb:

(1) not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders;

(2) bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or

(3) which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R.C.M. 1921; re-en. Sec. 3337, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963; amd. Sec. 137, Ch. 310, L. 1974; R.C.M. 1947, 46-1005; amd. Sec. 16, Ch. 166, L. 1989; amd. Sec. 11, Ch. 417, L. 1993.

81-4-602. Estrays — department authorized to take possession. The department and its appointed stock inspectors may take possession of estrays found running at large in this state and may dispose of the estrays, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915; re-en. Sec. 3333, R.C.M. 1921; re-en. Sec. 3333, R.C.M. 1935; amd. Sec. 133, Ch. 310, L. 1974; R.C.M. 1947, 46-1001.

81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into his possession an estray found in his district and shall either ship or arrange for the shipment of the estray to a licensed livestock market for sale, or he may hold the estray in his possession and care for the estray in the cheapest and most practicable manner for a period of not less than 30 days or more than 60 days, during which time he shall advertise that he holds the estray and that, unless claimed by the owner, he will on a date to be specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice shall be published in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper

in a paper published in the town or city nearest the place in which the estray is held. This notice shall be published at least once a week for 4 consecutive weeks and shall contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) The proceeds from the sale shall be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department.

History: En. Sec. 2, Ch. 34, L. 1915; re-en. Sec. 3334, R.C.M. 1921; re-en. Sec. 3334, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1943; amd. Sec. 134, Ch. 310, L. 1974; R.C.M. 1947, 46-1002; amd. Sec. 17, Ch. 166, L. 1989.

81-4-604. Sale at public auction — branding. On the date specified in the notice provided for in 81-4-603, the stock inspector shall sell the estray at a public auction to the highest bidder for cash. Before removal from the sale, the stock inspector shall brand the estray with the recorded estray brand of the department.

History: En. Sec. 3, Ch. 34, L. 1915; re-en. Sec. 3335, R.C.M. 1921; re-en. Sec. 3335, R.C.M. 1935; amd. Sec. 135, Ch. 310, L. 1974; R.C.M. 1947, 46-1003.

81-4-605. Expenses, how paid — disposition of proceeds of sale. (1) Expenses for collecting, holding, advertising, and selling of the estray, including but not limited to labor, feed, supplies, and veterinary services, shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of 2 years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the owner.

(2) The department may adopt rules and establish fees for the handling of estrays.

History: En. Sec. 4, Ch. 34, L. 1915; re-en. Sec. 3336, R.C.M. 1921; re-en. Sec. 3336, R.C.M. 1935; amd. Sec. 136, Ch. 310, L. 1974; R.C.M. 1947, 46-1004; amd. Sec. 1, Ch. 34, L. 1979; amd. Sec. 12, Ch. 444, L. 1983.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Seizure and sale of hides when ownership cannot be determined — disposition of proceeds, 81-9-403.

81-4-606. Publication of description of estrays sold — disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four weekly, semimonthly, or monthly publications in this state. The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of 2 years, it shall be, by the treasurer, upon request of the department, immediately placed to the credit of the state special revenue fund for the use of the department.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R.C.M. 1921; amd. Sec. 1, Ch. 63, L. 1927; re-en. Sec. 3338, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963; amd. Sec. 138, Ch. 310, L. 1974; R.C.M. 1947, 46-1006; amd. Sec. 1, Ch. 277, L. 1983.

81-4-607 through 81-4-610. Repealed. Sec. 21, Ch. 166, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

81-4-607. En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R.C.M. 1921; amd. Sec. 1, Ch. 29, L. 1923; re-en. Sec. 3341, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1, Ch. 99, L. 1957; amd. Sec. 139, Ch. 310, L. 1974; R.C.M. 1947, 46-1008.

81-4-608. En. Sec. 2, Ch. 94, L. 1907; Sec. 1821, Rev. C. 1907; re-en. Sec. 3342, R.C.M. 1921; re-en. Sec. 3342, R.C.M. 1935; R.C.M. 1947, 46-1010.

81-4-609. En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907; re-en. Sec. 3343, R.C.M. 1921; re-en. Sec. 3343, R.C.M. 1935; amd. Sec. 140, Ch. 310, L. 1974; amd. Sec. 44, Ch. 12, L. 1977; R.C.M. 1947, 46-1011.

81-4-610. En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907; re-en. Sec. 3344, R.C.M. 1921; re-en. Sec. 3344, R.C.M. 1935; amd. Sec. 141, Ch. 310, L. 1974; R.C.M. 1947, 46-1012.

81-4-611 through 81-4-620 reserved.

81-4-621. Penalties. A person who, for that person's own use or benefit and without the owner's consent, takes into possession any estray shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: (1)En. Sec. 2, Ch. 169, L. 1921; re-en. Sec. 3340, R.C.M. 1921; re-en. Sec. 3340, R.C.M. 1935; Sec. 46-1007, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1923; re-en. Sec. 3341.1, R.C.M. 1935; Sec. 46-1009, R.C.M. 1947; (3)En. Sec. 5, Ch. 94, L. 1907; Sec. 1824, Rev. C. 1907; re-en. Sec. 3345, R.C.M. 1921; re-en. Sec. 3345, R.C.M. 1935; Sec. 46-1013, R.C.M. 1947; R.C.M. 1947, 46-1007, 46-1009, 46-1013; amd. Sec. 55, Ch. 557, L. 1987; amd. Sec. 18, Ch. 166, L. 1989; amd. Sec. 4, Ch. 92, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

CHAPTER 5

UNLAWFUL TRANSPORTING OR DRIVING OF LIVESTOCK

Part 1 — Unlawful Driving of Animals

81-5-101. Moving livestock from customary range forbidden.
81-5-102. Driving animals upon railroad track.
81-5-103. Abandonment of sheep — penalty.
81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation.
81-5-105. Repealed.
81-5-106. Renumbered 81-5-110 by Code Commissioner, 1985.
81-5-107. Renumbered 81-5-111 by Code Commissioner, 1985.
81-5-108. Answer to allegations concerning use of property.
81-5-109. Presumption — hearing — disposition of vehicle and other property.
81-5-110. Sale at public auction — retention of property.
81-5-111. Disposition of proceeds — special revenue account.
81-5-112. Permit system for transportation of sheep — penalty.

Part 2 — Transportation of Sheep
(Repealed. Sec. 2, Ch. 175, L. 1989)

Chapter Cross-References

Control of livestock on highway emergency area, 7-14-2129.

Control of movement of livestock on or near county roads, 7-14-2130.

Establishment and alteration of stock lanes, 7-14-2621.

Employment of stock inspector, 7-21-3211 through 7-21-3213.

Acquisition of highways property — stock lanes or trails affected, 60-4-103.

Livestock on highways, Title 60, ch. 7.

Motor vehicles — operation of motor vehicles transporting stock directly across highways — traffic regulation and vehicle equipment, 61-8-101, 61-9-101.

Special fees — livestock hauling vehicles — certain farm vehicles, 61-10-206.

Unlawful use of aircraft, 67-1-204.

Necessary livestock caretakers — train travel free or at reduced rates, 69-11-208.

Carriers of property — liability provisions respecting livestock, 69-11-421, 69-11-422.

Injury to transported livestock — time limit for notification, 69-14-216.

Transportation and protection of livestock by railroads, Title 69, ch. 14, part 7; 69-14-801.

Effect of designation or acquisition of "natural areas", 76-12-111.

Rangeland resources, Title 76, ch. 14.

Grazing districts, Title 76, ch. 16.

Agricultural and grazing leases — state lands, Title 77, ch. 6.

Part 1
Unlawful Driving of Animals

Part Cross-References

Use of snowmobiles controlled, 23-2-633.

81-5-101. Moving livestock from customary range forbidden. (1) A person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) A person who negligently moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by:

(a) a term of imprisonment in the county jail not to exceed 6 months;

(b) a fine not exceeding:

(i) $25 for a first offense;

(ii) $250 for a second offense; and

(iii) $500 for a third or subsequent offense; or

(c) both imprisonment and the appropriate fine.

(3) Prior to the imposition of the penalty provided for in subsection (1) or (2), the owner of the livestock shall file a complaint with the department. The department shall conduct an investigation to determine the circumstances under which the livestock were moved.

History: En. Sec. 1, Ch. 60, L. 1919; re-en. Sec. 11549, R.C.M. 1921; re-en. Sec. 11549, R.C.M. 1935; Sec. 94-3568, R.C.M. 1947; redes. 46-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3002; amd. Sec. 1, Ch. 18, L. 1983; amd. Sec. 19, Ch. 166, L. 1989; amd. Sec. 12, Ch. 417, L. 1993; amd. Sec. 5, Ch. 92, L. 1995.

81-5-102. Driving animals upon railroad track. If a person willfully drives an animal upon a railroad track with intent to injure the corporation or persons owning the railroad and such animal is killed or injured thereby, the person is punishable by a fine not exceeding $50,000 or imprisonment in the state prison not exceeding 5 years, or both, and is liable for all injury or damage occasioned by reason of such act.

History: Ap. p. Sec. 1191, Pen. C. 1895; re-en. Sec. 8865, Rev. C. 1907; re-en. Sec. 11555, R.C.M. 1921; re-en. Sec. 11555, R.C.M. 1935; redes. 46-3003 by Sec. 29, Ch. 513, L. 1973; Sec. 46-3003, R.C.M. 1947; Ap. p. Sec. 724, 5th Div. Comp. Stat. 1887; amd. Sec. 957, Civ. C. 1895; re-en. Sec. 4316, Rev. C. 1907; re-en. Sec. 6547, R.C.M. 1921; re-en. Sec. 6547, R.C.M. 1935; Sec. 72-408, R.C.M. 1947; R.C.M. 1947, 46-3003, 72-408; amd. Sec. 4, Ch. 14, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Protection of livestock and agricultural resources, Title 69, ch. 14, part 7.

81-5-103. Abandonment of sheep — penalty. Every person who, having, by virtue of his employment as herder, driver, or otherwise, the charge or custody of any sheep, shall willfully abandon the same or allow them to stray from his charge or custody shall, upon conviction, be punished by a fine of not less than $100 or by imprisonment of not less than 3 months or more than 1 year, or by both such fine and imprisonment; provided, that if the person so in the charge or custody of such sheep shall have given to the owner of such sheep, or his authorized agent, at least 5 days' notice of his intention to quit his employment, he shall not be deemed to have abandoned such sheep, within the meaning of this section, by leaving the same after the expiration of such period.

History: En. Sec. 1, Ch. 116, L. 1909; re-en. Sec. 11550, R.C.M. 1921; re-en. Sec. 11550, R.C.M. 1935; Sec. 94-35-200, R.C.M. 1947; redes. 46-3004 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3004.

81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation. (1) The use of a vehicle, money, equipment, or personalty for the theft or transportation of a stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, alpaca, bison, hogs, poultry, ostrich, rhea, emu, or the products of stolen livestock is unlawful. Any vehicle, money, equipment, or personalty used for the theft or unlawful transportation or upon probable cause believed to be devoted wholly or in part to the theft or unlawful transportation must be seized and held.

(2) Within 45 days after the seizure, a peace officer or officer of the agency that seizes the property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall serve the summons upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for unlawful transportation; or

(b) the vehicle owner is not in collusion with the party or parties guilty of the theft.

History: En. Sec. 1, Ch. 80, L. 1931; re-en. Sec. 11552.1, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1963; Sec. 94-35-204, R.C.M. 1947; redes. 46-3005 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3005; amd. Sec. 4, Ch. 563, L. 1985; amd. Sec. 20, Ch. 166, L. 1989; amd. Sec. 1, Ch. 108, L. 1993; amd. Sec. 13, Ch. 417, L. 1993; amd. Sec. 10, Ch. 206, L. 1995.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

81-5-105. Repealed. Sec. 9, Ch. 563, L. 1985.

History: En. Sec. 3, Ch. 80, L. 1931; re-en. Sec. 11552.3, R.C.M. 1935; Sec. 94-35-206, R.C.M. 1947; redes. 46-3007 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 12, L. 1977; R.C.M. 1947, 46-3007.

81-5-106. Renumbered 81-5-110 by Code Commissioner, 1985.

81-5-107. Renumbered 81-5-111 by Code Commissioner, 1985.

81-5-108. Answer to allegations concerning use of property. Within 20 days after the service of the petition and summons or publication of the summons, as provided in 81-5-104, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the petition to institute forfeiture proceedings. Only one 20-day extension of the time for filing the answer may be granted, and failure to answer within 20 days or within the 20-day extension bars the owner or claimants from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 5, Ch. 563, L. 1985.

81-5-109. Presumption — hearing — disposition of vehicle and other property. (1) There is a rebuttable presumption of forfeiture as to all property used for the theft or transportation of the livestock as provided in 81-5-104.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, a hearing on the petition for forfeiture must be set without a jury not less than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of petition and summons.

(4) If the court finds that a vehicle, money, equipment, or personalty was not used for the purpose charged or that it was used without the consent or knowledge of the owner, it shall order the property released to the owner of record on the date of the seizure. If the court finds that the vehicle, money, equipment, or personalty was used for the purpose charged and was used with the knowledge and consent of the owner, the property must be ordered forfeited.

History: En. Sec. 6, Ch. 563, L. 1985; amd. Sec. 2, Ch. 108, L. 1993.

Cross-References

Disputable presumptions, 26-1-602.

81-5-110. Sale at public auction — retention of property. (1) Vehicles, equipment, and personalty forfeited under 81-5-109 may be sold at public auction in the manner of sales of personal property under execution and may be sold by any sheriff, livestock inspector, or other peace officer.

(2) The department may retain the vehicles, equipment, and personalty forfeited under 81-5-109 for official use by the department, including personnel training. If the department retains forfeited property that it determines to be suitable for everyday use by department personnel, the department shall reduce similar property purchases accordingly.

(3) Money forfeited under 81-5-109 must be placed in the special revenue account created in 81-5-111(2) for use by the department for personnel training or enforcement purposes.

History: En. Sec. 4, Ch. 80, L. 1931; re-en. Sec. 11552.4, R.C.M. 1935; Sec. 94-35-207, R.C.M. 1947; redes. 46-3008 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3008; amd. Sec. 7, Ch. 563, L. 1985; Sec. 81-5-106, MCA 1983; redes. 81-5-110 by Code Commissioner, 1985; amd. Sec. 3, Ch. 108, L. 1993.

Cross-References

Sale on execution, Title 25, ch. 13, part 7.

81-5-111. Disposition of proceeds — special revenue account. (1) After deducting the expenses of retaining the vehicle, equipment, or personalty and the cost of the sale, the officer making the sale or the department, if it retains the vehicle, equipment, or personalty, shall pay all liens to the extent the balance of sale proceeds permit, according to the lien priorities that are established by intervention or otherwise. A lien must be bona fide and have been created without the lienor having any notice or reasonable cause to believe that the vehicle, equipment, or personalty was being or was to be used for the theft or illegal transportation.

(2) There is an account in the state special revenue fund. The proceeds from the sale of vehicles, equipment, and personalty provided for in 81-5-110 must be deposited in the account, are statutorily appropriated, as provided in 17-7-502, and must be used by the department for personnel training or enforcement purposes.

History: En. Sec. 2, Ch. 80, L. 1931; re-en. Sec. 11552.2, R.C.M. 1935; Sec. 94-35-205, R.C.M. 1947; redes. 46-3006 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 200, Ch. 310, L. 1974; R.C.M. 1947, 46-3006; Sec. 81-5-107, MCA 1983; redes. 81-5-111 by Code Commissioner, 1985; amd. Sec. 4, Ch. 108, L. 1993.

Cross-References

Department of Livestock fund, 17-2-106.

Liens — general provisions, Title 71, ch. 3, part 1.

81-5-112. Permit system for transportation of sheep — penalty. (1) The department shall adopt rules imposing a permit system for the transportation of sheep within or out of the state if it finds that a permit system is necessary to prevent theft of sheep. The rules must establish fees commensurate with the department's cost of operating the permit system.

(2) A person who purposely or knowingly transports sheep in violation of rules adopted under subsection (1) is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or imprisonment in the county jail for a term not exceeding 6 months, or both.

History: En. Sec. 1, Ch. 175, L. 1989.

Part 2
Transportation of Sheep (Repealed. Sec. 2, Ch. 175, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

81-5-201. (1)En. Sec. 1, Ch. 135, L. 1963; amd. Sec. 110, Ch. 310, L. 1974; Sec. 46-809, R.C.M. 1947; (2)En. Sec. 2, Ch. 135, L. 1963; amd. Sec. 111, Ch. 310, L. 1974; Sec. 46-810, R.C.M. 1947; R.C.M. 1947, 46-809, 46-810.

81-5-202. En. Sec. 3, Ch. 135, L. 1963; amd. Sec. 112, Ch. 310, L. 1974; R.C.M. 1947, 46-811; amd. Sec. 13, Ch. 444, L. 1983.

81-5-203. En. Sec. 4, Ch. 135, L. 1963; amd. Sec. 113, Ch. 310, L. 1974; R.C.M. 1947, 46-812.

81-5-204. En. Sec. 5, Ch. 135, L. 1963; amd. Sec. 114, Ch. 310, L. 1974; R.C.M. 1947, 46-813.

CHAPTER 6
LIVESTOCK PROTECTIVE ASSOCIATIONS

Part 1 — Livestock Protective Committees

81-6-101. Petition for county livestock protective committee — members — term.
81-6-102. Organization of committee — officers — meetings.
81-6-103. Powers and duties of committee.
81-6-104. Tax levy — special fund.
81-6-105. Special livestock deputy — duties — compensation.
81-6-106. Discontinuing county livestock protective committee.
81-6-107. Cooperation with committee by adjoining county.
81-6-108. County participation in defraying part of administrative expenses.

Part 2 — Cattle Protective Districts

81-6-201. Formation of districts in two or more counties authorized — petition of cattle owners — declaration by county commissioners.
81-6-202. Selection of cattle protective committee members.
81-6-203. Powers and duties of protective committees.
81-6-204. Tax levy — deposit of proceeds.
81-6-205. Removal of area from protective district — discontinuance of district — levy saved.
81-6-206. Formation of county district authorized — petition of cattle owners — declaration by county commissioners.
81-6-207. Selection of cattle protective committee members.
81-6-208. Powers and duties of protective committees.
81-6-209. Tax levy — deposit of proceeds.
81-6-210. Discontinuance of district — levy saved.

Part 3 — Livestock Crimestoppers

81-6-301. Short title.
81-6-302. Definitions.
81-6-303 through 81-6-310 reserved.
81-6-311. Functions of commission.
81-6-312. Compensation.
81-6-313. Powers and duties of department — rules.
81-6-314. Confidentiality.

Chapter Cross-References

Special levies on commodities for livestock protection, Art. XII, sec. 1, Mont. Const.

Employment of stock inspectors by Board of County Commissioners, 7-21-3211.

County control of dogs harassing or injuring livestock, 7-23-2109.

Livestock per capita tax levy, 15-24-921.

Highway patrol officers' authority to stop livestock or livestock products in transit — suspicion of stolen goods, 44-1-1004.

Use of snare traps so as not to unduly endanger livestock, 87-3-107.

Part 1

Livestock Protective Committees

81-6-101. Petition for county livestock protective committee — members — term. (1) The board of county commissioners must, upon receipt of a petition or petitions to do so, set up a county livestock protective committee of three members. The petition or petitions must be signed by at least 51% of the owners of cattle in the county, and such petitioners must own at least 55% of the cattle in the county.

(2) Members appointed to serve on such committee shall be residents of the county engaged in the business of raising cattle. If there be in the county any organization of cattle growers, the county commissioners shall give preference to names submitted by any such group for appointment to such committee. The term for which said committee members shall be appointed shall be 2 years with two members of the first committee named to serve for 2 years, one member to serve for 1 year. Members of such committee shall receive no remuneration or reimbursement for expenses for serving on said committee.

(3) By "organization of cattle growers", as used in this section, is meant any group or organization holding regular meetings at least annually, having officers, and composed predominantly of cattle growers resident in the county, with its membership open to cattle growers willing to abide by its governing rules or bylaws, and its general purpose being the promotion of the interests of its members in matters pertaining to the cattle or livestock industry.

(4) If owners of sheep in the county desire to come under the provisions of this part in cooperation with owners of cattle, they shall file a like petition to that set out herein for owners of cattle, and in such case at least one member of said livestock protective committee shall be a sheep grower and where the word "cattle" appears in this part, it shall be deemed to comprehend also the word "sheep".

(5) Owners of sheep alone may form a county livestock protective committee, in which case the word "cattle" as in this part contained shall be considered as if it were the word "sheep"; and provided further that the levy as provided in 81-6-104 hereof shall, in the case of sheep, not exceed 5 cents per head.

History: En. Sec. 1, Ch. 168, L. 1953; R.C.M. 1947, 46-2701; amd. Sec. 6, Ch. 660, L. 1987.

Cross-References

Selection of Cattle Protective Committee members, 81-6-202, 81-6-207.

81-6-102. Organization of committee — officers — meetings. Said county livestock protective committee shall upon appointment and annually thereafter organize by election of a chairman and a secretary. Meetings of the committee shall be held at the call of the chairman or any two members of the committee. Minutes of all meetings of the committee shall be kept by the secretary. Such minutes shall be presented at the ensuing meeting of the committee and upon approval thereof shall be signed by the chairman and secretary and immediately thereafter deposited with the county clerk and recorder and kept available for public inspection.

History: En. Sec. 2, Ch. 168, L. 1953; R.C.M. 1947, 46-2702.

81-6-103. Powers and duties of committee. The county livestock protective committee shall advise, assist, and cooperate with the department of livestock, the board of county commissioners, the sheriff, and all other public officials or police officers who have duties pertaining to hide and brand inspection, apprehension of livestock rustlers, the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases, and other matters which are of interest and value to the livestock industry in the county.

History: En. Sec. 3, Ch. 168, L. 1953; amd. Sec. 180, Ch. 310, L. 1974; R.C.M. 1947, 46-2703.

Cross-References

Authority concerning livestock or livestock products in transit, 44-1-1004.

Illegal branding or altering or obscuring of brand, 45-6-327.

Disease control — powers of Department, 81-2-102.

Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-6-104. Tax levy — special fund. The county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the county on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: En. Sec. 4, Ch. 168, L. 1953; amd. Sec. 1, Ch. 10, L. 1955; amd. Sec. 4, Ch. 388, L. 1975; R.C.M. 1947, 46-2704; amd. Sec. 1, Ch. 258, L. 1979; amd. Sec. 7, Ch. 660, L. 1987.

Cross-References

Department of Agriculture, Art. XII, sec. 1, Mont. Const.

Tax provisions relating to livestock, 15-1-101; 15-6-136; 15-6-207; 15-7-202; 15-8-201; 15-24-301; 15-24-302; Title 15, ch. 24, part 9; 15-30-201.

Individual income tax provisions relating to livestock — definitions, 15-30-201.

81-6-105. Special livestock deputy — duties — compensation. The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws which are of particular concern to the livestock industry of the county, particularly as regards cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county and shall give the bond for the faithful performance of his duties as required from officers performing similar duties. The special livestock deputy shall receive compensation for his services and for mileage traveled in the performance of his duties in an amount set by the board of county commissioners on the recommendation of the committee, to be paid from the stockmen's special deputy fund and from the county general fund in the proportions set by the board of county commissioners.

History: En. Sec. 5, Ch. 168, L. 1953; amd. Sec. 181, Ch. 310, L. 1974; R.C.M. 1947, 46-2705.

Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.

Illegal branding or altering or obscuring of brand, 45-6-327.

Disease control — powers of Department, 81-2-102.

Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-6-106. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in 81-6-101, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions and the proceeds of any levy made shall be used for the purposes as in this part set out. No district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953; amd. Sec. 2, Ch. 204, L. 1967; R.C.M. 1947, 46-2706.

81-6-107. Cooperation with committee by adjoining county. The board of county commissioners of any county adjoining a county availing itself of the provisions of this part may cooperate in the administration of this part.

History: En. Sec. 7, Ch. 168, L. 1953; R.C.M. 1947, 46-2707.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

81-6-108. County participation in defraying part of administrative expenses. Nothing in this part shall be construed to limit or deprive the board of county commissioners to participate in defraying a part of the expense of the administration of this part.

History: En. Sec. 8, Ch. 168, L. 1953; R.C.M. 1947, 46-2708.

Part 2
Cattle Protective Districts

81-6-201. Formation of districts in two or more counties authorized — petition of cattle owners — declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least 51% of the cattle owners owning 55% of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition, each board of county commissioners must within 30 days declare the designated portion of its county a part of such cattle protective district, and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963; R.C.M. 1947, 46-2801.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

81-6-202. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under 81-6-101.

History: En. Sec. 2, Ch. 181, L. 1963; R.C.M. 1947, 46-2802.

81-6-203. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of part 1 of this chapter.

History: En. Sec. 3, Ch. 181, L. 1963; R.C.M. 1947, 46-2803.

81-6-204. Tax levy — deposit of proceeds. The district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: En. Sec. 4, Ch. 181, L. 1963; amd. Sec. 5, Ch. 388, L. 1975; R.C.M. 1947, 46-2804; amd. Sec. 2, Ch. 258, L. 1979; amd. Sec. 8, Ch. 660, L. 1987.

Cross-References

Agriculture, Art. XII, sec. 1, Mont. Const.

81-6-205. Removal of area from protective district — discontinuance of district — levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in 81-6-201, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions and the proceeds of any levy made shall be used for the purposes as in this part set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967; R.C.M. 1947, 46-2805.

81-6-206. Formation of county district authorized — petition of cattle owners — declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least 51% of the cattle owners owning 55% of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within 30 days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: **En. Sec. 1, Ch. 91, L. 1965; R.C.M. 1947, 46-2806.**

81-6-207. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three members, who shall be chosen in the same manner as members of a county cattle protective committee under 81-6-101.

History: **En. Sec. 2, Ch. 91, L. 1965; R.C.M. 1947, 46-2807.**

81-6-208. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of part 1 of this chapter.

History: **En. Sec. 3, Ch. 91, L. 1965; R.C.M. 1947, 46-2808.**

81-6-209. Tax levy — deposit of proceeds. The district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: **En. Sec. 4, Ch. 91, L. 1965; amd. Sec. 6, Ch. 388, L. 1975; R.C.M. 1947, 46-2809; amd. Sec. 3, Ch. 258, L. 1979; amd. Sec. 9, Ch. 660, L. 1987.**

81-6-210. Discontinuance of district — levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions and the proceeds of any levy made shall be used for the purposes as in this part set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: **En. Sec. 5, Ch. 91, L. 1965; amd. Sec. 3, Ch. 204, L. 1967; R.C.M. 1947, 46-2810.**

Part 3
Livestock Crimestoppers

Part Cross-References

Livestock Crimestoppers Commission, 2-15-3104.

81-6-301. Short title. This part may be cited as the "Livestock Crimestoppers Act".

History: **En. Sec. 1, Ch. 571, L. 1983.**

81-6-302. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the livestock crimestoppers commission created in 2-15-3104.

(2) "Department" means the department of livestock created in Title 2, chapter 15, part 31.

(3) "Livestock" includes ostriches, rheas, and emus in addition to other livestock.

(4) "Program" means the livestock crimestoppers program created under 81-6-313.

History: En. Sec. 2, Ch. 571, L. 1983; amd. Sec. 11, Ch. 206, L. 1995.

81-6-303 through 81-6-310 reserved.

81-6-311. Functions of commission. The commission shall recommend to the department:

(1) the names of individuals to be rewarded for providing information used in detecting and combating livestock-related crimes;

(2) the amount of any reward recommended; and

(3) means for promoting the program.

History: En. Sec. 5, Ch. 571, L. 1983.

81-6-312. Compensation. Members of the commission may receive no salary but must be paid expenses incurred while on official business, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 571, L. 1983.

81-6-313. Powers and duties of department — rules. (1) The department shall:

(a) create, maintain, and promote a statewide livestock crimestoppers program in order to assist law enforcement agencies in detecting and combating livestock-related crimes; and

(b) consider the commission's recommendations and take action on them.

(2) The department may:

(a) advise and assist in the creation and maintenance of local programs;

(b) encourage the channeling of information from the programs to law enforcement agencies;

(c) foster the detection of livestock-related crimes by the public;

(d) encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of livestock-related crimes;

(e) promote the state and local programs through the media;

(f) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

(g) adopt rules necessary to administer the provisions of this part.

History: En. Secs. 6, 7, Ch. 571, L. 1983.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-6-314. Confidentiality. The identity of a person submitting information under the program and any information that may lead to the disclosure of such identity is confidential.

History: En. Sec. 8, Ch. 571, L. 1983.

Cross-References

Right of privacy, Art. II. sec. 10, Mont. Const.

CHAPTER 7

PREDATORY ANIMAL CONTROL

Part 1 — Predatory Animal Control

81-7-101. Definition. 81-7-101. Definition.
81-7-102. Department to supervise destruction of predatory animals — cooperation with other agencies — administration of moneys.
81-7-103. Administration of funds by the department.
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81-7-105. Disposition of proceeds from sale of skins, hides, and specimens — presenting to museums.
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81-7-115. Duty of county clerk.
81-7-116. Bounty claims and certificates to be filed with department.
81-7-117. Department to examine claims and certificates — approval or disapproval of claims.
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81-7-121. Falsifying certificates or affidavits — penalty.
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Part 2 — County Bounty Program

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81-7-203. County bounty fund.
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81-7-503. Residency requirement.
81-7-504. Duration of permit — fee.
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81-7-506. Prohibition against harassing livestock.
81-7-507 through 81-7-510 reserved.

81-7-511. Penalty — revocation of permit.
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Part 6 — County Predator Control for Protection of Cattle

81-7-601. Definition.
81-7-602. County commissioners authorized to establish predatory animal control program for protection of cattle.
81-7-603. County commissioners permitted to levy per capita license fee on cattle.
81-7-604. Proceeds of skins taken.
81-7-605. Duty of county commissioners — petition of cattle owners — license fees.

Chapter Cross-References

Special levies on commodities for predator control, Art. XII, sec. 1, Mont. Const.

County contribution to state special revenue fund for predatory animal control, 7-21-2105.

County agricultural and livestock services, Title 7, ch. 21, part 32.

Provisions concerning county cooperation with Department of Livestock in control of noxious rodents and related animals, Title 7, ch. 22, part 22.

Livestock per capita tax levy, 15-24-921.

Approval of bounty claims for wild animals, 87-1-206.

Regulation of wild animals damaging property, 87-1-225.

Disposition of meat of animals damaging property, 87-1-226.

Permission of landowner to trap predators, 87-2-604.

Use of aircraft or boats for predator control, 87-3-126.

Use of dogs, traps, and other means, except use of deadfall, in taking stock-killing animals, 87-3-127.

Predatory animals — fur dealers, Title 87, ch. 4, part 3.

Killing of predatory birds destroying livestock permitted, 87-5-209.

Part 1
Predatory Animal Control

81-7-101. *(Temporary)* **Definition.** For the purpose of this part the term "wild animal" shall include coyote, lynx, and any other animal causing depredations upon livestock.

81-7-101. *(Effective on occurrence of contingency)* **Definition.** For the purpose of this part, the term "predatory animal" includes gray wolf, coyote, lynx, and any other animal causing depredations upon livestock.

History: En. Sec. 1, Ch. 73, L. 1923; re-en. Sec. 3417.1, R.C.M. 1935; amd. Sec. 2, Ch. 27, L. 1974; amd. Sec. 2, Ch. 67, L. 1975; amd. Sec. 5, Ch. 235, L. 1977; R.C.M. 1947, 46-1902; amd. Sec. 1, Ch. 244, L. 1995.

Compiler's Comments

Contingent Effective Date: Section 7, Ch. 244, L. 1995, provided: "[This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United States government."

81-7-102. *(Temporary)* **Department to supervise destruction of predatory animals — cooperation with other agencies — administration of moneys.** (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry, and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.

(4) This section and 81-7-103 do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law, or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control shall be administered and expended by the department of fish, wildlife, and parks.

81-7-102. *(Effective on occurrence of contingency)* **Department to supervise destruction of predatory animals — cooperation with other agencies — administration of money.** (1) The department of livestock shall conduct the destruction, extermination, and control of predatory animals capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry, and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control which are necessary and proper for the systematic destruction of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county

commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of predatory animals by hunting, trapping, and poisoning operations.

(4) This section and 81-7-103 do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law, or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control must be administered and expended by the department of fish, wildlife, and parks.

History: En. Sec. 2, Ch. 73, L. 1923; re-en. Sec. 3417.2, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 46-1903(1), (3); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 244, L. 1995.

Compiler's Comments

Contingent Effective Date: Section 7, Ch. 244, L. 1995, provided: "[This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United States government."

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201, 87-1-206.

Obligation of Department of Fish, Wildlife, and Parks to expend funds for predatory animal control in cooperation with Department of Livestock, 87-1-206.

81-7-103. Administration of funds by the department. The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money allocated for this purpose under 81-7-104 and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department at those times of the year it considers advisable.

History: Ap. p. Sec. 2, Ch. 73, L. 1923; re-en. Sec. 3417.2, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 46-1903, R.C.M. 1947; Ap. p. Sec. 4 1/2, Ch. 73, L. 1923; re-en. Sec. 2081.1, R.C.M. 1935; amd. Sec. 4, Ch. 422, L. 1975; Sec. 84-5215, R.C.M. 1947; R.C.M. 1947, 46-1903(2), 84-5215; amd. Sec. 10, Ch. 660, L. 1987.

81-7-104. *(Temporary)* **Predator control moneys — use of proceeds.** (1) The department of livestock shall allocate a portion of the money from the levy under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.

(2) Money shall be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. Money designated for predator control shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. No claims may be approved in excess of moneys available for such purposes, and no warrants may be registered against the moneys.

81-7-104. *(Effective on occurrence of contingency)* **Predator control money — use of proceeds.** (1) The department of livestock shall allocate a portion of the money from the levy under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by predatory animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.

(2) Money must be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. Money designated for predator control must be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory animals, as determined by the department and its advisory committee. Claims may not be approved in excess of money available for those purposes, and warrants may not be registered against the money.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R.C.M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; re-en. Sec. 2081, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963; amd. Sec. 54, Ch. 100, L. 1973; amd. Sec. 108, Ch. 405, L. 1973; amd. Sec. 3, Ch. 422, L. 1975; amd. Sec. 62, Ch. 566, L. 1977; R.C.M. 1947, 84-5214; amd. Sec. 2, Ch. 445, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 11, Ch. 660, L. 1987; amd. Sec. 3, Ch. 244, L. 1995.

Compiler's Comments

Contingent Effective Date: Section 7, Ch. 244, L. 1995, provided: "[This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United States government."

Cross-References

Taxation — collection procedures, 15-24-302.

81-7-105. Disposition of proceeds from sale of skins, hides, and specimens — presenting to museums. Furs, skins, and specimens taken by hunters or trappers shall be sold by the department. The proceeds from the sales shall be credited to the state special revenue fund. The proceeds shall be used to carry out the provisions of 81-7-101 through 81-7-105. Specimens may be presented free of charge to a state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; re-en. Sec. 3417.3, R.C.M. 1935; amd. Sec. 99, Ch. 147, L. 1963; amd. Sec. 151, Ch. 310, L. 1974; R.C.M. 1947, 46-1904; amd. Sec. 1, Ch. 277, L. 1983.

81-7-106 through 81-7-110 reserved.

81-7-111. Evidence of killing by bounty claimant. (1) Any person killing a predatory animal, except a mountain lion, to obtain a bounty shall within 30 days of the date of the killing:

(a) exhibit the entire skin of the animal, including the entire head with ears, the tail, and all four paws, to the bounty inspector nearest to the locality in which the animal was killed; and

(b) at the same time file with the bounty inspector an affidavit setting forth:

(i) that the person killed the animal from which the skin was taken;

(ii) that the animal was killed nearer to or, if more than one hide is presented, that the greater number of animals were killed nearer to the residence of the bounty inspector to which the animals are being presented than to any other bounty inspector; and

(iii) the county or counties in which the animals were killed.

(2) Any person killing a mountain lion to obtain a bounty shall present the mountain lion to a bounty inspector as provided in this section, except that, in addition to the requirements of this section, the skin of a mountain lion must also contain the entire skin of the lower jaw, which must be severed by the bounty inspector and thereafter treated in the same manner as the skins of other animals subject to this section.

(3) Every bounty inspector appointed under the provisions of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 is empowered to administer oaths to persons making the affidavit required by this section.

History: En. Sec. 2, Ch. 109, L. 1925; re-en. Sec. 3417.5, R.C.M. 1935; R.C.M. 1947, 46-1906; amd. Sec. 2, Ch. 214, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 214 in (2), after "section", deleted "for wolves and coyotes" and at end substituted "the skins of other animals subject to this section" for "scalps of wolves and coyotes herein provided"; in (3) deleted reference to 81-7-119; and made minor changes in style.

81-7-112. Bounty inspectors. The sheriff of a county and undersheriffs and deputy sheriffs located at the county seat but not elsewhere shall receive and examine skins and pelts presented for bounty in their respective counties. The sheriff shall receive 10 cents for each skin examined, this amount to be paid by the owner of the skin.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part).

Cross-References

Duties of Sheriff, 7-32-2121.

81-7-113. Claim for bounty. (1) A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, he shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it and shall require an affidavit from the claimant that the claimant killed the animal. The affidavit shall be on forms prescribed by the department and contain information the department requires.

(2) The officer shall require affidavits from two resident taxpayers residing in the vicinity in which the animal was killed, setting forth that they are resident taxpayers on livestock, giving their post-office addresses, and stating that they are personally acquainted with the person presenting the skin and, to their knowledge, the person did kill the animal from which the skin was taken within 30 days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. A taxpayer who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part).

Cross-References

Penalty for perjury, 45-7-201.

81-7-114. Certificate and record of sheriff. (1) Upon receiving the affidavit required pursuant to 81-7-113, the officer shall deliver to the person claiming a bounty a certificate addressed to the county clerk of the officer's county and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing and the name of the person presenting the skins. The certificate must also recite that the filing of the affidavits of taxpayers required by 81-7-113 has been done and the examination of the skins has been made as required. The certificate must be signed by the officer in the officer's official capacity. When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate must be issued for the lesser bounty. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 except at the county seat.

(2) The sheriff shall, not later than the 15th of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate and the kind and number of the skins presented. The sheriff shall report for each certificate issued during the month.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part); amd. Sec. 3, Ch. 214, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 214 in (1), in first sentence at beginning, inserted reference to receipt of affidavit required pursuant to 81-7-113 and near middle, after "person", inserted "claiming a bounty", in second sentence inserted reference to 81-7-113, and in seventh sentence, near end, deleted reference to 81-7-119; and made minor changes in style.

81-7-115. Duty of county clerk. (1) The county clerk shall, on receipt of each certificate, file the certificate in the order in which it is received and safely keep it until the arrival of the skin or skins mentioned in the certificate.

On receipt of the skin or skins he shall call to his assistance either the county treasurer or, in his absence, the clerk of the district court who, with both present in order to prevent fraud, shall examine each scalp or mountain lion lower jaw skin. If the examination discloses that the scalps or lower jaw skins agree with the number and kind of scalps or lower jaw skins mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps or lower jaw skins by fire.

(2) The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by him and that he found the scalps or lower jaw skins to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. In no case may a bounty certificate be issued by the county clerk for more scalps or lower jaw skins than are actually received and counted by him.

(3) The county clerk shall receive, for each scalp or skin of a mountain lion lower jaw which he accounts for, the sum of 5 cents to be paid quarterly by the state treasurer out of the bounty fund.

(4) The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the 20th of each month.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(3); amd. Sec. 5, Ch. 14, L. 1979.

Cross-References

Role and duties of County Clerk, 7-4-2611.

81-7-116. Bounty claims and certificates to be filed with department. Bounty claims and certificates issued by the county clerk and recorders under 81-7-115 shall be filed with the department and registered in a book provided for that purpose.

History: En. Sec. 4, Ch. 109, L. 1925; re-en. Sec. 3417.7, R.C.M. 1935; amd. Sec. 153, Ch. 310, L. 1974; R.C.M. 1947, 46-1908.

81-7-117. Department to examine claims and certificates — approval or disapproval of claims. The department shall examine and investigate every bounty claim and certificate filed with the department. When it makes the examination and investigation, the department may require the holder of a certificate or claim to furnish the department with the additional evidence or proof about the certificate or claim which the department considers necessary. The evidence may be either oral or documented, as required by the department. The department shall, after making the examination and investigation, endorse on the certificate or claim its approval or disapproval of it, and if the certificate or claim or any part of it is disapproved, the endorsement shall state the reasons for the disapproval. If a certificate or claim is approved, it shall be processed as provided by law.

History: En. Sec. 5, Ch. 109, L. 1925; re-en. Sec. 3417.8, R.C.M. 1935; amd. Sec. 23, Ch. 97, L. 1961; amd. Sec. 154, Ch. 310, L. 1974; R.C.M. 1947, 46-1909.

81-7-118. *(Temporary)* **Levy of tax for purpose of paying bounty claims — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of wild animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received must be used only for the payment of claims approved by the department for the destruction of wild animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the taxes levied must be sent annually with other taxes to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

81-7-118. *(Effective on occurrence of contingency)* **Levy of tax for purpose of paying bounty claims — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of predatory animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received must be used only for the payment of claims approved by the department for the destruction of predatory animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the taxes levied must be sent annually with other taxes to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; re-en. Sec. 3417.13, R.C.M. 1935; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963; amd. Sec. 156, Ch. 310, L. 1974; amd. Sec. 42, Ch. 566, L. 1977; R.C.M. 1947, 46-1914; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 244, L. 1995; amd. Sec. 4, Ch. 214, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 214 at end of third sentence deleted reference to 81-7-119; and made minor changes in style.

Contingent Effective Date: Section 7, Ch. 244, L. 1995, provided: "[This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United States government."

81-7-119. Repealed. Sec. 8, Ch. 214, L. 1997.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R.C.M. 1921; re-en. Sec. 3414, R.C.M. 1935; amd. Sec. 97, Ch. 147, L. 1963; R.C.M. 1947, 46-1901; amd. Sec. 6, Ch. 14, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

81-7-120. Use of funds remaining after payment of bounties — sale of furs, skins, and specimens — presentation to museums. (1) If, at the end of a bounty paying season, there is surplus money available for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122, the surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries are paid in whole or in part out of this money must be sold by the department, and the proceeds from these sales must be credited to the state special revenue fund. These funds must be used to carry out 81-7-111 through

81-7-118 and 81-7-120 through 81-7-122. Specimens may be presented free of charge to a state museum or institution.

History: **En. Sec. 8, Ch. 109, L. 1925; re-en. Sec. 3417.11, R.C.M. 1935; amd. Sec. 100, Ch. 147, L. 1963; amd. Sec. 155, Ch. 310, L. 1974; R.C.M. 1947, 46-1912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 5, Ch. 214, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 214 in (1) and in second sentence of (2) deleted reference to 81-7-119; and made minor changes in style.

81-7-121. Falsifying certificates or affidavits — penalty. A person who falsely makes, alters, forges, or counterfeits any of the certificates or orders and any person who falsely swears to any affidavit provided for by 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 or procures the same act to be done by another, with the intent of obtaining any one of the certificates or orders, is punishable as provided in Title 45.

History: **En. Sec. 9, Ch. 109, L. 1925; re-en. Sec. 3417.12, R.C.M. 1935; R.C.M. 1947, 46-1913; amd. Sec. 7, Ch. 14, L. 1979; amd. Sec. 6, Ch. 214, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 214 deleted reference to 81-7-119; and made minor changes in style.

Cross-References

Falsification of certificates or falsely sworn affidavits — forgery — criminal penalty, 45-6-325, 45-7-202, 45-7-203.

81-7-122. Penalty for fraudulent claims. A person who patches up a skin or scalp or presents a punched or patched skin or scalp or who brings in any skin or skins from other states or territories with the intent to fraudulently obtain a bounty or an officer who signs a certificate without first counting and examining the skins to determine the kind of skins and to see that the skin from the scalp or head is properly severed and preserved or a person who evades or violates any provision of law of the state of Montana relative to bounties or bounty claims shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year or both. Two-thirds of the fine must be given to the person, if any, reporting the evasion or violation and the balance must be deposited in the state special revenue fund and used for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122.

History: **En. Sec. 11, Ch. 109, L. 1925; re-en. Sec. 3417.14, R.C.M. 1935; amd. Sec. 102, Ch. 147, L. 1963; R.C.M. 1947, 46-1915; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 7, Ch. 214, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 214 in second sentence substituted "person, if any, reporting the evasion or violation" for "informer" and at end deleted reference to 81-7-119; and made minor changes in style.

Part 2
County Bounty Program

Part Cross-References

Taxation — collection procedures, 15-24-302.

81-7-201. County levy for bounties on predatory animals. Whenever the owners, agent, or agents of the owners representing 51% of the livestock of any county in this state present a petition to the board of county commissioners of such county asking for the levy of a tax upon the livestock of the county for the purpose of paying bounties on predatory animals killed in the county, it is the duty of the board of county commissioners to make the levy, which may not exceed 50 mills on the dollar of the taxable value of all livestock in the county. The tax shall be assessed and collected in the same manner as all other state and county taxes.

History: En. Sec. 1, Ch. 180, L. 1921; re-en. Sec. 2082, R.C.M. 1921; re-en. Sec. 2082, R.C.M. 1935; amd. Sec. 63, Ch. 566, L. 1977; R.C.M. 1947, 84-5216.

81-7-202. Signers of petition — time for presenting — limitation on bounties — bounty inspectors. (1) The petition provided for in 81-7-201 shall be signed by the owners, agent, or agents of not less than 51% of the livestock of such county as ascertained from the assessment books of such county and shall recommend to the board of county commissioners the bounties to be paid on such predatory animals, which shall not exceed the following:

(a) on each wolf or mountain lion, $100;
(b) on each wolf pup or mountain lion kitten, $20;
(c) on one coyote, $5;
(d) on each coyote pup, $2.50.

(2) Such petition shall be presented not later than August 1 of each year, and the board of county commissioners on determining the sufficiency of such petition shall make an order granting such petition, which order shall fix the levy for that year and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than 10 or more than 20 stockowners of such county to be bounty inspectors under this part, without compensation, who shall hold their offices for 1 year.

History: En. Sec. 2, Ch. 180, L. 1921; re-en. Sec. 2083, R.C.M. 1921; amd. Sec. 1, Ch. 37, L. 1923; re-en. Sec. 2083, R.C.M. 1935; R.C.M. 1947, 84-5217.

81-7-203. County bounty fund. The tax collected under this part shall be credited by the county treasurer to a fund to be known as "county bounty fund" and shall be paid out by him upon properly drawn warrants issued thereon by the county clerk.

History: En. Sec. 3, Ch. 180, L. 1921; re-en. Sec. 2084, R.C.M. 1921; re-en. Sec. 2084, R.C.M. 1935; R.C.M. 1947, 84-5218.

81-7-204. Presentation of skins — affidavit. Any person claiming bounty on any predatory animal under this part shall present the green skin or pelt of such animal, with all four feet attached thereto, to any one of the bounty inspectors provided for in 81-7-202 and shall make an affidavit that such animal was killed within the county where the bounty is claimed, which affidavit shall be corroborated by at least two reputable stockowners of such county to the effect that they know or have good cause to believe that such animal was killed within such county. For the purpose of this part, each bounty inspector provided for in this part shall be empowered to administer oaths. The bounty inspector shall endorse upon such affidavit his approval or disapproval of such claim and shall cut from such skin or pelt the four feet. The person applying for such bounty shall then present the affidavit, with the endorsements thereon, to the county auditor or, in counties not having an auditor, to the county clerk, who shall attach the same to a claim against said county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county.

History: **En. Sec. 4, Ch. 180, L. 1921; re-en. Sec. 2085, R.C.M. 1921; re-en. Sec. 2085, R.C.M. 1935; R.C.M. 1947, 84-5219.**

81-7-205. County clerk to provide forms. The county clerk shall provide the necessary forms of affidavits and claims for carrying out the provisions of this part.

History: **En. Sec. 5, Ch. 180, L. 1921; re-en. Sec. 2086, R.C.M. 1921; re-en. Sec. 2086, R.C.M. 1935; R.C.M. 1947, 84-5220.**

81-7-206. Existing bounty laws not affected. Nothing in this part contained shall be construed as interfering with, in any way, or repealing any part of the existing laws of the state relative to the levying of taxes for and paying of the bounties on predatory animals under such state laws.

History: **En. Sec. 6, Ch. 180, L. 1921; re-en. Sec. 2087, R.C.M. 1921; re-en. Sec. 2087, R.C.M. 1935; R.C.M. 1947, 84-5221.**

Part 3

County Predator Control for Protection of Sheep

81-7-301. Definition. The word “owners” or “persons” shall include natural persons, partnerships, corporations, trusts, and estates.

History: **En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part).**

81-7-302. County commissioners to conduct predatory animal control program for protection of sheep. For the protection of sheep against depredations peculiar to such animals, the board of county commissioners of any county shall upon the recommendation of organized associations of sheep growers in the county have power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of sheep in such county or counties.

History: **En. Sec. 1, Ch. 206, L. 1943; R.C.M. 1947, 46-2101.**

81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of any county may require all owners or persons in possession of any sheep 1 year old or older in the county on the regular assessment date of each year to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of any sheep 1 year old or older coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the property tax record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable

immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part); amd. Sec. 1, Ch. 9, L. 1981; amd. Sec. 153, Ch. 27, Sp. L. November 1993.

81-7-304. Proceeds of furs and skins taken. All furs, skins, and so forth taken by the expenditure of license funds shall be sold and the proceeds of such sale deposited in said predatory animal control fund for the use in carrying out the purpose of this part.

History: En. Sec. 3, Ch. 206, L. 1943; R.C.M. 1947, 46-2103.

81-7-305. Duty of county commissioners — petition of sheep owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program and cause said licenses to be secured and issued and the fees collected for the following year in such amount as will defray the cost of administering the program so established. The license fee determined and set by the board shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied.

(2) If the resident owners of at least 51% of the sheep in the county either petition for an increase in the license fee or petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965; amd. Sec. 2, Ch. 261, L. 1977; R.C.M. 1947, 46-2104; amd. Sec. 2, Ch. 9, L. 1981.

Part 4

Dogs

Part Cross-References

Domestic animal control and protection, Title 7, ch. 23.

81-7-401. Killing of dogs harassing, destroying, or injuring stock — notice to owner — penalty. (1) As used in this section, "harasses" means worries, chases, or runs after livestock, including ostriches, rheas, and emus, in a manner that may lead to subsequent injury to the livestock.

(2) A dog, whether licensed or not, that, while off the premises owned or under control of its owner and on property owned, leased, or controlled by the livestock owner, harasses, kills, wounds, or injures livestock not belonging to the owner of the dog is considered a public nuisance and:

(a) may be killed immediately by the owner of the livestock or an agent or employee of the owner; or

(b) the owner of the dog, when reasonably notified after due process, shall kill the dog within 24 hours of notification. If the owner fails to do so, an officer may be notified and shall kill the dog or cause the dog to be killed.

(3) A dog may not be killed in a manner that will endanger a person.

(4) This section does not apply to a dog herding livestock under the direction of its owner or the agents or employees of its owner.

(5) This section does not apply to a dog engaged in legitimate sport hunting or predator control activities under the direction of its owner or the agents or employees of its owner.

(6) The owner of a dog that harasses, kills, wounds, or injures livestock is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

History: En. Sec. 1, Ch. 142, L. 1933; re-en. Sec. 3417.15, R.C.M. 1935; R.C.M. 1947, 46-1916; amd. Sec. 1, Ch. 106, L. 1993; (6)En. Sec. 2, Ch. 106, L. 1993; amd. Sec. 12, Ch. 206, L. 1995.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

81-7-402. Liability of owner of dog for damages to livestock or poultry. (1) The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It is no defense to the action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill, or injure livestock or poultry.

(2) The word "owner" when used in this section in relation to property interest in or possession of dogs includes every person who owns, harbors, or keeps a dog.

History: En. Secs. 14, 15, Ch. 280, L. 1959; R.C.M. 1947, 16-4614, 16-4615; amd. Sec. 8, Ch. 14, L. 1979.

81-7-403. Dogging livestock. Any person who permits or directs any dog owned by him or in his possession to chase or run any cattle or other livestock of which he is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and punishable by a fine of not more than $500.

History: En. Sec. 1, Ch. 110, L. 1903; re-en. Sec. 8861, Rev. C. 1907; re-en. Sec. 11552, R.C.M. 1921; re-en. Sec. 11552, R.C.M. 1935; Sec. 94-3567, R.C.M. 1947; redes. 46-3001 by

Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 12, L. 1977; R.C.M. 1947, 46-3001; amd. Sec. 3, Ch. 106, L. 1993.

Part 5
Aerial Hunting of Predatory Animals

Part Cross-References

Restrictions on use of aircraft or boats, 87-3-126.

81-7-501. *(Temporary)* **Aerial hunting prohibited — exceptions.** (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment, may engage in the aerial hunting of wild animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of wild animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) No person issued a permit as required by this section may engage in aerial hunting of wild animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of this part.

81-7-501. *(Effective on occurrence of contingency)* **Aerial hunting prohibited — exceptions.** (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment, may engage in the aerial hunting of predatory animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of predatory animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) A person issued a permit as required by this section may not engage in aerial hunting of predatory animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of this part.

History: En. Sec. 1, Ch. 704, L. 1979; amd. Sec. 1, Ch. 333, L. 1983; amd. Sec. 5, Ch. 244, L. 1995.

Compiler's Comments

Contingent Effective Date: Section 7, Ch. 244, L. 1995, provided: "[This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United States government."

81-7-502. Rulemaking authority. The department of livestock may adopt rules to effectuate the purposes of this part and to implement and conduct the aerial hunting permit system provided for by this part.

History: En. Sec. 2, Ch. 704, L. 1979.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-7-503. Residency requirement. No person not having residence and domicile in Montana may be issued a permit provided for in 81-7-501 except when authorized by the board of livestock. Permits issued to nonresidents may be used only:

(1) in Montana counties adjacent to the state line that the department of livestock has determined are inadequately serviced by resident permittees; or

(2) on real property in Montana owned by the nonresident permittee.

History: **En. Sec. 4, Ch. 704, L. 1979; amd. Sec. 2, Ch. 333, L. 1983.**

Cross-References

Rules for determining residence, 1-1-215.

81-7-504. Duration of permit — fee. The department of livestock shall establish a fee for the permit, and each permit shall be valid for a period set by the department not to exceed 3 years. All fees for permits shall be paid to the department of livestock for deposit in the state treasury to the credit of the state special revenue fund for predatory animal control.

History: **En. Sec. 3, Ch. 704, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 444, L. 1983.**

81-7-505. *(Temporary)* **Resident landowners authorized to aerially hunt over their own lands without permit — conditions.** Any landowner having residence and domicile in Montana may engage in the aerial hunting of wild animals, as defined in 81-7-101, over his own land without a permit, provided he annually notifies the department in writing that he will be engaged in aerial hunting and gives an adequate description of the location of the land over which he will aerially hunt. Such hunting must be in accordance with all rules of the department of livestock.

81-7-505. *(Effective on occurrence of contingency)* **Resident landowners authorized to aerially hunt over their own lands without permit — conditions.** Any landowner having residence and domicile in Montana may engage in the aerial hunting of predatory animals, as defined in 81-7-101, over that person's own land without a permit, provided the landowner annually notifies the department in writing that the landowner will be engaged in aerial hunting and gives an adequate description of the location of the land over which the landowner will aerially hunt. Aerial hunting must be in accordance with all rules of the department of livestock.

History: **En. Sec. 5, Ch. 704, L. 1979; amd. Sec. 3, Ch. 333, L. 1983; amd. Sec. 6, Ch. 244, L. 1995.**

Compiler's Comments

Contingent Effective Date: Section 7, Ch. 244, L. 1995, provided: "[This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United States government."

81-7-506. Prohibition against harassing livestock. While engaged in flying an aircraft, no person, whether or not lawfully authorized to aerially hunt, may knowingly harass, injure, or attempt to injure any livestock except with the express permission of the owner of that livestock.

History: **En. Sec. 5, Ch. 333, L. 1983.**

81-7-507 through 81-7-510 reserved.

81-7-511. Penalty — revocation of permit. Any person convicted of violating a provision of this part is punishable by a fine of not less than $500 or more than $1,000. In addition, the permit, if any, of such person must be revoked for such period as the court may determine.

History: **En. Sec. 6, Ch. 704, L. 1979; amd. Sec. 4, Ch. 333, L. 1983.**

81-7-512. Enforcement. (1) Investigations of violations of this part, arrests, and seizures may be made by any peace officer, or agent of the department designated by the department.

(2) To enforce this part, the department may enter into agreement with federal agencies with predatory animal control. Such agreements may allow the federal agency to assist in investigations, arrests, and seizures.

History: **En. Sec. 7, Ch. 704, L. 1979.**

Part 6

County Predator Control for Protection of Cattle

81-7-601. Definition. As used in this part, the word "owners" or "persons" includes natural persons, partnerships, corporations, trusts, and estates.

History: **En. Sec. 1, Ch. 76, L. 1995.**

81-7-602. County commissioners authorized to establish predatory animal control program for protection of cattle. Upon the recommendation of an organized association of cattle producers in the county, the board of county commissioners may, either alone or in conjunction with the county commissioners of other counties, establish a predatory animal control program for the protection of cattle in the county or counties.

History: **En. Sec. 2, Ch. 76, L. 1995.**

Cross-References

County vertebrate pest management, Title 7, ch. 22, part 25.

81-7-603. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months old or older in the county on the regular assessment date of each year to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months old or older coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the property tax record of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program.

History: **En. Sec. 3, Ch. 76, L. 1995.**

81-7-604. Proceeds of skins taken. All furs, skins, and other portions of predatory animals taken through the expenditure of license fees must be sold and the proceeds of the sale deposited in the predatory animal control fund for use in carrying out the purpose of this part.

History: **En. Sec. 4, Ch. 76, L. 1995.**

81-7-605. Duty of county commissioners — petition of cattle owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by an organized association of cattle producers in the county. Upon petition of the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last preceding assessment, which petition must be filed with the board of county commissioners on or before the first Monday in December in any year, the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. The license fee set by the board must remain in effect from year to year without change unless there is filed with the board a petition signed by the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last assessment preceding the filing of the petition, for termination of the program and elimination of the license fee. Upon the filing of the petition, the board of county commissioners shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the cattle in the county file a petition with the board of county commissioners either for an increase in the license fee or for a decrease in the license fee then in force, the board of county commissioners shall set a new license fee to continue from year to year.

History: En. Sec. 5, Ch. 76, L. 1995.

CHAPTER 8

MARKETING

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(Repealed. Sec. 37, Ch. 566, L. 1979)

Part 2 — Livestock Markets and Dealers

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81-8-901. Beef promotion and marketing — powers and duties of department.
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Chapter Cross-References

Appropriation of money to promote county agricultural services or products, 7-21-3201.

Public markets, Title 7, ch. 21, part 33.

Town or city power to regulate inspection of foodstuffs and sale of meat and poultry, 7-21-4202.

Certain livestock exempt from taxation, 15-6-207.

Livestock taxation provisions, Title 15, ch. 24, part 9.

Unborn animals and growing crops included in Uniform Commercial Code definition of goods, 30-2-105, 30-9-105.

Passage of title when cattle shipped interstate, 30-2-401.

Farm products defined — Uniform Commercial Code, 30-9-109.

Attachment of security interest in young of livestock, 30-9-204.

Commission merchants, Title 30, ch. 11, part 4.

Sale of livestock products, Title 30, ch. 12, part 4.

Meat, poultry, and seafood to be sold by weight, 30-12-401.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Sale of agricultural products and livestock by institutions, Title 53, ch. 1, part 3.

Fees for farm vehicles, 61-10-206.

Injury to transported livestock — time limit for notification, 69-14-216.

Marketing of agricultural products, including livestock and livestock products, Title 80, ch. 11, part 1.

Part 1
Livestock Markets
(Repealed. Sec. 37, Ch. 566, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

81-8-101. En. Sec. 1, Ch. 193, L. 1945; amd. Sec. 118, Ch. 310, L. 1974; amd. Sec. 1, Ch. 292, L. 1975; amd. Sec. 30, Ch. 12, L. 1977; R.C.M. 1947, 46-906.

81-8-102. En. Sec. 3, Ch. 193, L. 1945; amd. Sec. 120, Ch. 310, L. 1974; amd. Sec. 34, Ch. 12, L. 1977; R.C.M. 1947, 46-908.

81-8-103. En. Sec. 4, Ch. 193, L. 1945; amd. Sec. 121, Ch. 310, L. 1974; amd. Sec. 1, Ch. 44, L. 1977; R.C.M. 1947, 46-909.

81-8-104. En. 46-909.1 by Sec. 1, Ch. 192, L. 1977; R.C.M. 1947, 46-909.1.

81-8-105. En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963; amd. Sec. 123, Ch. 310, L. 1974; amd. Sec. 36, Ch. 12, L. 1977; R.C.M. 1947, 46-911.

81-8-106. En. Sec. 7, Ch. 193, L. 1945; amd. Sec. 124, Ch. 310, L. 1974; amd. Sec. 37, Ch. 12, L. 1977; amd. Sec. 2, Ch. 44, L. 1977; R.C.M. 1947, 46-912.

81-8-107. En. Sec. 10, Ch. 193, L. 1945; amd. Sec. 127, Ch. 310, L. 1974; amd. Sec. 39, Ch. 12, L. 1977; R.C.M. 1947, 46-915.

81-8-108. En. Sec. 12, Ch. 193, L. 1945; amd. Sec. 1, Ch. 231, L. 1947; amd. Sec. 129, Ch. 310, L. 1974; amd. Sec. 41, Ch. 12, L. 1977; R.C.M. 1947, 46-917.

81-8-109. En. 46-906.1 by Sec. 2, Ch. 292, L. 1975; amd. Sec. 31, Ch. 12, L. 1977; R.C.M. 1947, 46-906.1.

81-8-110 through 81-8-120 reserved.

81-8-121. En. Sec. 2, Ch. 193, L. 1945; amd. Sec. 119, Ch. 310, L. 1974; amd. Sec. 32, Ch. 12, L. 1977; R.C.M. 1947, 46-907.

81-8-122. En. Sec. 9, Ch. 193, L. 1945; amd. Sec. 126, Ch. 310, L. 1974; R.C.M. 1947, 46-914.

81-8-123. En. Sec. 2, Ch. 96, L. 1907; Sec. 1816, Rev. C. 1907; re-en. Sec. 3329, R.C.M. 1921; re-en. Sec. 3329, R.C.M. 1935; amd. Sec. 115, Ch. 310, L. 1974; R.C.M. 1947, 46-902.

81-8-124. En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, R.C.M. 1921; re-en. Sec. 3330, R.C.M. 1935; amd. Sec. 116, Ch. 310, L. 1974; amd. Sec. 29, Ch. 12, L. 1977; R.C.M. 1947, 46-903(part).

81-8-125. (1), (2)En. Sec. 1, Ch. 96, L. 1907; Sec. 1815, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1909; re-en. Sec. 3328, R.C.M. 1921;

re-en. Sec. 3328, R.C.M. 1935; Sec. 46-901, R.C.M. 1947; (3)En. Sec. 8, Ch. 193, L. 1945; amd. Sec. 125, Ch. 310, L. 1974; amd. Sec. 38, Ch. 12, L. 1977; Sec. 46-913, R.C.M. 1947; R.C.M. 1947, 46-901, 46-913.

81-8-126. En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, R.C.M. 1921; re-en. Sec. 3330, R.C.M. 1935; amd. Sec. 116, Ch. 310, L. 1974; amd. Sec. 29, Ch. 12, L. 1977; R.C.M. 1947, 46-903(part).

81-8-127. En. 46-907.1 by Sec. 3, Ch. 292, L. 1975; amd. Sec. 33, Ch. 12, L. 1977; R.C.M. 1947, 46-907.1.

81-8-128. En. Sec. 14, Ch. 193, L. 1945; R.C.M. 1947, 46-919.

81-8-129. En. Sec. 11, Ch. 193, L. 1945; amd. Sec. 128, Ch. 310, L. 1974; amd. Sec. 40, Ch. 12, L. 1977; R.C.M. 1947, 46-916.

81-8-130. En. Sec. 13, Ch. 193, L. 1945; amd. Sec. 130, Ch. 310, L. 1974; R.C.M. 1947, 46-918.

81-8-131. En. Sec. 1, Ch. 34, L. 1969; amd. Sec. 131, Ch. 310, L. 1974; R.C.M. 1947, 46-918.1.

81-8-132. En. Sec. 15, Ch. 193, L. 1945; amd. Sec. 132, Ch. 310, L. 1974; amd. Sec. 42, Ch. 12, L. 1977; R.C.M. 1947, 46-920.

81-8-133. En. Sec. 16, Ch. 193, L. 1945; amd. Sec. 43, Ch. 12, L. 1977; R.C.M. 1947, 46-921.

Part 2
Livestock Markets and Dealers

Part Cross-References

Jurisdiction of Justices' Courts over misdemeanor violations, 3-10-303.

81-8-201 through 81-8-210. Repealed. Sec. 37, Ch. 566, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

81-8-201 through 81-8-204. En. Sec. 1 through 3, 7, Ch. 414, L. 1971; amd. Sec. 182 through 184, 190, Ch. 310, L. 1974; R.C.M. 1947, 46-2901 through 46-2903, 46-2907.

81-8-205. En. 46-2903.1 by Sec. 185, Ch. 310, L. 1974; R.C.M. 1947, 46-2903.1

81-8-206. En. 46-2903.2 by Sec. 186, ch. 310, L. 1974; amd. Sec. 1, Ch. 17. L. 1977; R.C.M. 1947, 46-2903.2.

81-8-207 through 81-8-209. En. Sec. 4 through 6, Ch. 414, L. 1971; amd. Sec. 187 through 189, Ch. 310, L. 1974; R.C.M. 1947, 46-2904 through 46-2906.

81-8-210. En. 46-2906.1 by Sec. 2, Ch. 190, L. 1977; R.C.M. 1947, 46-2906.1.

81-8-211. Short title. This part may be cited as the "Montana Livestock Marketing Act".

History: En. Sec. 1, Ch. 566, L. 1979.

81-8-212. Purpose. The purpose of this part is to:

(1) simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions;

(2) encourage, stimulate, and stabilize the livestock economy of the state; and

(3) promote open, free, and competitive factors in the marketplace in relation to all market conditions involving the sale and purchase of livestock.

History: En. Sec. 2, Ch. 566, L. 1979.

81-8-213. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Custodial account for shippers' proceeds" or "custodial account" means a separate account established and maintained by a market agency or a satellite video livestock auction market engaged in selling livestock on a commission or agency basis. The account must be maintained in a Montana bank insured by the federal deposit insurance corporation and used to maintain and disburse all funds due to consignors from livestock sold on a commission

basis. All checks or banking instruments to consignors in payment of the net proceeds from the sale of consigned livestock must be issued on the custodial account. This account must disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock.

(5) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(6) (a) "Livestock dealer" means a person engaged in the business of purchasing livestock:

(i) for immediate resale;

(ii) for interstate shipment; or

(iii) on a commission or fee basis:

(A) for the account of others; or

(B) for or on behalf of a dealer or a market.

(b) The term does not include a farmer or rancher who buys or sells livestock in the ordinary course of a farming or ranching operation.

(7) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairy producer, livestock breeder, or feeder who is discontinuing business and at which other livestock is not sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept for the grazing season or for fattening is sold and to which other livestock is not brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits sale to livestock of the person's own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under the breeder's or the association's own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(8) "Person" means an individual, firm, association, partnership, or corporation.

(9) "Satellite video livestock auction market" or "video auction market" means a place or establishment operated or conducted for compensation or profit as a public market where livestock located in this state are sold or offered for sale at a facility within the state through the use of a satellite video at a public auction.

(10) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock.

History: **En. Sec. 3, Ch. 566, L. 1979; amd. Sec. 2, Ch. 52, L. 1985; amd. Sec. 1, Ch. 401, L. 1989; amd. Sec. 1, Ch. 160, L. 1995.**

81-8-214. Regulation of certain nonmarket sales. (1) A person not a livestock market operator authorized under this part conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are owned by that person and are being sold from that person's own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond or its equivalent in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the department; and

(h) other information that the department considers necessary.

History: En. Sec. 16, Ch. 566, L. 1979; amd. Sec. 1, Ch. 11, L. 1995.

81-8-215. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place it in quarantine, to be disposed of as directed by the department.

History: En. Sec. 21, Ch. 566, L. 1979.

Cross-References

Disease control, Title 81, ch. 2.

81-8-216. Penalties. (1) A person who knowingly violates any provision of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted to implement those sections shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel the person's certificate.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% must be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% must be paid into the general revenue fund of the county in which the conviction occurred.

(3) A person is, upon conviction, guilty of a felony if the person knowingly fails:

(a) to establish a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter; or

(b) to properly use a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter.

History: En. Sec. 24, Ch. 566, L. 1979; amd. Sec. 3, Ch. 52, L. 1985; amd. Sec. 142, Ch. 370, L. 1987; amd. Sec. 56, Ch. 557, L. 1987; amd. Sec. 1, Ch. 279, L. 1989; amd. Sec. 1, Ch. 5, L. 1993.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-8-217. Jurisdiction. The justices' courts have jurisdiction of all misdemeanor and civil violations of this part.

History: En. Sec. 32, Ch. 566, L. 1979.

81-8-218 through 81-8-230 reserved.

81-8-231. Duties of department. The department shall:

(1) supervise and regulate livestock markets and livestock dealers in this state and periodically audit the records of those markets and dealers;

(2) regulate the properties, facilities, operations, services, and practices of all livestock markets and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe, by general order or otherwise, rules in conformity with this part applicable to all livestock markets or livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce this part and adopt rules necessary to carry out this part.

History: En. Sec. 4, Ch. 566, L. 1979; amd. Sec. 4, Ch. 52, L. 1985; amd. Sec. 2, Ch. 11, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Penalties for violation of rules, 81-8-279.

81-8-232. Posting of certificate or license. Every person certified or licensed under the provisions of this part shall conspicuously post at his place of business for inspection by any other person the certificate or license issued by the department.

History: En. Sec. 5, Ch. 566, L. 1979.

81-8-233. Title warranty of livestock sold. A livestock market or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the market at the time of the sale.

History: En. Sec. 8, Ch. 566, L. 1979; amd. Sec. 5, Ch. 52, L. 1985.

81-8-234. Financial responsibility. (1) Every livestock market or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument.

History: En. Sec. 6, Ch. 566, L. 1979; amd. Sec. 6, Ch. 52, L. 1985.

81-8-235. Penalties for financial violations. (1) A person found, after notice and hearing, to be in violation of 81-8-234 shall be assessed a civil penalty by the department of not less than $100 or more than $5,000, have his license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of 81-8-234 after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have his license or certificate suspended or revoked.

(3) A person, whether or not licensed under this part, who issues or delivers a check or other order upon a real or fictitious depository in payment for a livestock purchase knowing that it will not be paid by the depository is guilty of a felony and on conviction may be imprisoned for not more than 5 years or fined not more than $10,000, or both. If the person has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew it would not be paid by the depository.

History: En. Sec. 7, Ch. 566, L. 1979; amd. Sec. 7, Ch. 52, L. 1985.

81-8-236. Injunctive remedy. The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by this part may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market or livestock dealer as defined in 81-8-213 without the license or certificate and bond required by this part. The court shall enjoin the person from further activities as a livestock market operator or livestock dealer until the license or certificate and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in this part.

History: En. Sec. 33, Ch. 566, L. 1979; amd. Sec. 8, Ch. 52, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

81-8-237 through 81-8-250 reserved.

81-8-251. Certificate to operate livestock market required — application. (1) A person may not operate a livestock market unless he first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience shall be in writing, verified by the applicant, and filed with the department. It shall specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered to them by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators thereof;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require.

History: En. Sec. 9, Ch. 566, L. 1979.

81-8-252. Hearing on application for certificate — decision. (1) Upon the filing of the application, the department shall fix a time and place for a hearing thereon, which may not be less than 10 days after the filing. The department shall have a copy of the application, excluding the financial statement described in 81-8-251(2)(h), and notice of the hearing served by mail upon:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the granting of any such certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

History: En. Sec. 10, Ch. 566, L. 1979; amd. Sec. 1, Ch. 39, L. 1987.

81-8-253. Transfer of certificate. The department may approve the transfer of ownership of a certificate of public convenience and necessity issued pursuant to this part without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of 81-8-252 of a hearing to consider an initial application for a certificate.

History: En. Sec. 11, Ch. 566, L. 1979.

81-8-254. Cancellation or suspension of certificate. (1) The department may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator:

(a) is guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

(b) is in violation of any of the provisions of this part;

(c) is in violation of any of the rules adopted by the department; or

(d) is in violation of Title 81, chapter 3, part 2.

(2) The department on its own initiative or on written complaint may investigate a livestock market and may file a complaint against the livestock market with the board. The complaint shall be set for hearing before the board, and the department shall serve notice of the hearing on the livestock market at least 10 days before such hearing.

(3) An investigation or hearing initiated by the department under this part may be held before an examiner designated by the board. Any finding or order made by an examiner, if confirmed by the board, is the order or finding of the board.

History: En. Sec. 14, Ch. 566, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — notice, 2-4-601.

Rulemaking power of Department of Livestock, 81-8-231.

81-8-255. Appeal by holder of or applicant for certificate. An appeal of a decision of the department refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300, to be approved by the judge, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the department being affirmed. The cost of preparing transcripts shall be paid by appellant. In a case of suspension or revocation of a certificate, the filing of the notice and bond stays the order of the department until the final determination of the appeal. If the appellant fails to perfect the appeal, the stay shall automatically terminate.

History: En. Sec. 15, Ch. 566, L. 1979.

81-8-256. Fee to operate livestock market. A person operating a livestock market shall pay annually on May 1 to the department a fee established by the department. All fees shall be paid into the state treasury and credited to the state special revenue fund for the use of the department.

History: En. Sec. 12, Ch. 566, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 444, L. 1983.

81-8-257. Repealed. Sec. 29, Ch. 444, L. 1983.

History: En. Sec. 13, Ch. 566, L. 1979.

81-8-258. Records and reports. Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

History: En. Sec. 18, Ch. 566, L. 1979.

81-8-259. Occasional off-premises sales. (1) The department may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the department considers necessary.

(2) No livestock market for which a certificate has been issued under this part may conduct an off-premises sale without obtaining prior approval of the department.

History: En. Sec. 17, Ch. 566, L. 1979.

81-8-260. Dispersal sales. Dispersal sales conducted through a livestock market must meet the requirements of this part.

History: En. Sec. 19, Ch. 566, L. 1979.

81-8-261. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold and shall be accorded every facility by the owners thereof in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until he has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

History: En. Sec. 20, Ch. 566, L. 1979.

Cross-References

Employment of stock inspector, 7-21-3211.

Authority of municipal corporations, 81-2-105.

Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-8-262. Sale of animals of unknown ownership. (1) If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale within a reasonable time.

(2) Whenever livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, it may be sold as strays and the net proceeds derived from the sale shall be handled as provided in 81-8-263.

History: En. Sec. 22, Ch. 566, L. 1979.

Cross-References

Seizure of livestock — retention of livestock — sale — disposal of proceeds, 81-3-204.

81-8-263. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish his lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with chapter 4, part 6, of Title 81, relating to the distribution of estray money, and the department's receipt therefor shall relieve the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock must be transmitted by the authorized brand inspector to the department.

History: En. Sec. 23, Ch. 566, L. 1979.

Cross-References

Authorized stock inspector, 81-1-201, 81-3-203.

81-8-264. Satellite video livestock auction market — license to transact business — license fee — contract — renewal. (1) A satellite video livestock auction market may transact business in this state only through a licensed livestock dealer or through a livestock market that is domiciled in the state.

(2) A livestock dealer or a livestock market that proposes to transact business with a video auction market shall file an application for a license with the department on a form prescribed by the department with the following information:

(a) the nature of the business for which a license is requested;

(b) the name and address of the livestock dealer or the livestock market;

(c) the name and address of the video auction market; and

(d) any additional information that the department may require.

(3) The application must be accompanied by:

(a) a fee established by the department commensurate with the costs of administering 81-8-265 and this section;

(b) evidence that the department may require indicating that the video auction market is financially responsible and bonded to transact business and has established a custodial account for shippers' proceeds; and

(c) a copy of the contract between the licensed livestock dealer or the livestock market and the video auction market. The contract must provide:

(i) for reasonable access by the department to all records and documents relating to the activities of the video auction market; and

(ii) that the livestock dealer or the livestock market and the video auction market are jointly and severally liable, with the right of contribution, for all business transacted within the state.

(4) If the contract described in subsection (3)(c) is terminated, rescinded, breached, or materially altered, the livestock dealer or the livestock market shall immediately notify the department. Failure to notify the department is considered to be:

(a) a failure to keep and maintain suitable records with the department; and

(b) a false entry or statement of fact in an application filed with the department.

(5) On or before May 1 of each year, a livestock dealer or a livestock market shall renew the license by fulfilling the requirements of subsections (1) through (4).

(6) The license fee must be remitted to the state treasurer to the credit of the department.

History: En. Sec. 2, Ch. 160, L. 1995.

Cross-References

Livestock taxation provisions, Title 15, ch. 24, part 9.

81-8-265. Refusal to issue or renew license — suspension or revocation. (1) The department may refuse to issue or renew a license in accordance with the provisions of 81-8-273.

(2) The department may suspend or revoke a license in accordance with the provisions of 81-8-274.

(3) If the contract between the livestock dealer or the livestock market and the video auction market is terminated, rescinded, breached, or otherwise materially altered by either party, the department may refuse to renew the license or may suspend or revoke the license.

History: En. Sec. 3, Ch. 160, L. 1995.

81-8-266 through 81-8-270 reserved.

81-8-271. License to operate as livestock dealer — application. (1) A person may not operate as a livestock dealer without a license. A person who wishes to operate as a livestock dealer shall file with the department an application for a license to transact business on a form prescribed by the department, stating the type of license sought and the following information:

(a) the names of the persons applying for the license, together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state; and

(d) proof of acquisition of a bond or its equivalent from the packers and stockyards administration of the United States department of agriculture.

(2) An application fee of $50 must be submitted with each application for a livestock dealer's license. The fee is the first annual fee if the license is granted.

(3) A person who purports to act as an agent for a livestock dealer in the purchase or sale of livestock may not engage in those business activities without a livestock dealer's license.

History: En. Sec. 25, Ch. 566, L. 1979; amd. Sec. 9, Ch. 52, L. 1985; amd. Sec. 2, Ch. 401, L. 1989; amd. Sec. 3, Ch. 11, L. 1995.

81-8-272. Issuance of livestock dealer's license. When an applicant has paid the fee and met the requirements of 81-8-271, the department shall issue to the applicant a license which entitles the licensee to operate as a livestock dealer for a period of 1 year unless the license is suspended or revoked under this part.

History: En. Sec. 25, Ch. 566, L. 1979; amd. Sec. 10, Ch. 52, L. 1985.

81-8-273. Refusal to issue or renew license. (1) The department shall refuse to issue or renew a license if the applicant:

(a) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities;

(b) is in violation of any of the provisions of this part;

(c) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(d) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(e) is in violation of the rules adopted by the department;

(f) has failed to comply with a lawful order of the department;

(g) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(h) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.; or

(i) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States department of agriculture.

(2) An applicant refused a license or license renewal may not apply again for 1 year following refusal unless the department determines that the applicant has met the requirements of this part.

History: En. Sec. 26, Ch. 566, L. 1979; amd. Sec. 11, Ch. 52, L. 1985; amd. Sec. 3, Ch. 401, L. 1989.

81-8-274. Suspension or revocation of license. (1) Whenever the department finds that any livestock dealer has violated the provisions of this part or rules adopted under this part, the department may, by order, suspend the license of such person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of such person.

(2) Before any license issued under this part may be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the department to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and the place of such hearing. The notice may be served by registered or certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take

and receive evidence, under oath, with respect to the complaint, and upon such evidence received, shall promptly dismiss the proceedings or revoke or suspend the license.

History: En. Sec. 29, Ch. 566, L. 1979; amd. Sec. 12, Ch. 52, L. 1985.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

81-8-275. Termination of license. A license issued under this part terminates at the close of business on May 1 of each year following the issuance of the license unless the annual fee has been paid.

History: En. Sec. 30, Ch. 566, L. 1979; amd. Sec. 4, Ch. 401, L. 1989.

81-8-276. Annual fee and financial statement. Livestock dealers shall pay an annual fee established by the department and when requested by the department shall supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department.

History: En. Sec. 25, Ch. 566, L. 1979; amd. Sec. 16, Ch. 444, L. 1983; amd. Sec. 13, Ch. 52, L. 1985; amd. Sec. 5, Ch. 401, L. 1989.

81-8-277. Repealed. Sec. 7, Ch. 401, L. 1989.

History: En. Sec. 27, Ch. 566, L. 1979; amd. Sec. 14, Ch. 52, L. 1985.

81-8-278. Records. A livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to his business.

History: En. Sec. 28, Ch. 566, L. 1979; amd. Sec. 15, Ch. 52, L. 1985.

81-8-279. Penalties. (1) A person who violates any provision of 81-8-271 through 81-8-273, 81-8-276, or 81-8-278 or rules adopted by the department to implement those sections is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred.

History: En. Sec. 31, Ch. 566, L. 1979; amd. Sec. 16, Ch. 52, L. 1985; amd. Sec. 57, Ch. 557, L. 1987; amd. Sec. 6, Ch. 401, L. 1989.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 3

Security Interests Concerning Livestock

Part Cross-References

U.C.C. — secured transactions, Title 30, ch. 9.

81-8-301. Notices of security agreements — renewals — assignments. (1) The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association and bearing its recorded brand and shall list the notices on the official records of marks and brands kept by it. The department shall transfer a copy of the notices and their accompanying brands to the central livestock markets. All forms on which the notices are given shall be prescribed by the department and furnished by the secured party who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed and a copy is transferred as hereinbefore provided. The department of livestock may not be held liable to any secured party for the proceeds of livestock sold through a livestock market by the debtor.

(2) Notices of security agreements must be renewed every 5 years commencing on January 1, 1983, by notifying the department in a manner prescribed by it and by paying the fee set pursuant to 81-8-304 not more than 30 days before or 90 days after January 1.

(3) Assignments of security interests must be renewed every 5 years commencing on January 1, 1983, by notifying the department and paying the fee set pursuant to 81-8-304 not more than 30 days before or 90 days after January 1.

(4) Failure to comply with the provisions of subsection (2) or (3) will result in the termination of the notice on the 91st day following the applicable January 1 without notification by the department.

(5) Satisfactions of security agreements must be filed immediately with the department of livestock.

History: En. Sec. 1, Ch. 91, L. 1935; re-en. Sec. 3308.1, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963; amd. Sec. 191, Ch. 310, L. 1974; R.C.M. 1947, 52-319; amd. Sec. 1, Ch. 449, L. 1981.

Cross-References

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

81-8-302. Contents of notices. The notices must consist of a statement showing the date of security agreement; the names and addresses of the debtors and secured parties or holders and owners of the security agreement; a description of the livestock covered by the security agreement; in the case of a notice of renewal, the date of renewal; in the case of a notice of assignment of a security interest, the date of the assignment, a description of the security agreement to which the assignment is made, and the parties to the assignment; and any additional information that is required by the department. The notice of security agreement must be signed by the affected debtor or proper legal authority.

History: En. Sec. 2, Ch. 91, L. 1935; re-en. Sec. 3308.2, R.C.M. 1935; amd. Sec. 11-139, Ch. 264, L. 1963; amd. Sec. 192, Ch. 310, L. 1974; R.C.M. 1947, 52-320; amd. Sec. 4, Ch. 11, L. 1995.

81-8-303. Duty of secured parties to file satisfactions of security agreements. The secured parties, who filed notices of security agreements, renewals, and assignments with the department of livestock, as provided for in this part, shall file notices of satisfaction of the security agreements with the department immediately upon the satisfaction of the security agreement.

History: En. Sec. 3, Ch. 91, L. 1935; re-en. Sec. 3308.3, R.C.M. 1935; amd. Sec. 11-140, Ch. 264, L. 1963; amd. Sec. 193, Ch. 310, L. 1974; R.C.M. 1947, 52-321.

81-8-304. Fees. The department shall charge a fee for filing and listing the notices of security agreements for each recorded brand listed in each security agreement and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement for each recorded brand listed. The fees shall be set by rules adopted pursuant to the Montana Administrative Procedure Act, upon the basis of actual cost to the department for each brand listed. All fees shall be paid into the state special revenue fund for the use of the department.

History: En. Sec. 4, Ch. 91, L. 1935; re-en. Sec. 3308.4, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969; amd. Sec. 194, Ch. 310, L. 1974; amd. Sec. 1, Ch. 11, L. 1977; R.C.M. 1947, 52-322; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 17, Ch. 444, L. 1983.

Cross-References

Montana Administrative Procedure Act — rulemaking provisions, Title 2, ch. 4, part 3.

81-8-305. Department of livestock not responsible for collection or payment of money under security agreements. The department of livestock, its agents and employees, are not responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock or renewals, satisfactions, or assignments thereof as provided in this part, if this part is carried out in good faith.

History: En. Sec. 5, Ch. 91, L. 1935; re-en. Sec. 3308.5, R.C.M. 1935; amd. Sec. 11-142, Ch. 264, L. 1963; amd. Sec. 195, Ch. 310, L. 1974; R.C.M. 1947, 52-323.

Cross-References

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

81-8-306 through 81-8-310 reserved.

81-8-311. Range stock — taking possession under process. Whenever it is necessary for an officer or person charged with the service of process out of any of the courts of this state to take possession of any cattle or horses running at large and commonly known as range stock, between November 1 and the next succeeding May 15, it is a sufficient service of such process for the officer or person within 15 days after receiving the process for service to file a copy thereof with the county clerk of the county wherein such property is running at large, with a notice appended thereto stating the number as near as may be and a description of the stock by marks and brands, and stating that such property or a portion thereof, as the case may be, is attached or levied upon in pursuance of such process. Such officer or person shall make due return of the service of process.

History: En. Sec. 1, p. 111, L. 1885; re-en. Sec. 223, 1st Div. Comp. Stat. 1887; re-en. Sec. 940, C. Civ. Proc. 1895; re-en. Sec. 6693, Rev. C. 1907; re-en. Sec. 9296, R.C.M. 1921; re-en. Sec. 9296, R.C.M. 1935; R.C.M. 1947, 93-4343; amd. Sec. 9, Ch. 14, L. 1979.

81-8-312. Possession under a mortgage — how acquired. In all cases where it is necessary under the laws of this state for a party to any mortgage, assignment, bill of sale, or other contract, between November 1 and the next succeeding May 15, to take possession of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale, or other contract, it is sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the general recorder of marks and brands within 5 days after it becomes necessary for him to so take custody and possession of the same.

History: En. Sec. 2, p. 111, L. 1885; re-en. Sec. 224, 1st Div. Comp. Stat. 1887; re-en. Sec. 941, C. Civ. Proc. 1895; re-en. Sec. 6694, Rev. C. 1907; re-en. Sec. 9297, R.C.M. 1921; re-en. Sec. 9297, R.C.M. 1935; amd. Sec. 11-163, Ch. 264, L. 1963; R.C.M. 1947, 93-4344.

81-8-313. Limitation of period of possession. When the copy of the process or instrument, with the proper notice appended thereto, is filed as hereinbefore provided, it has the same effect as if actual possession of said cattle and horses had been taken by the officer or person charged with the execution of such process, or the party required under said instrument to take the same, and shall continue to have such effect until actual possession of such property has been taken or had by the officer, person, or party aforesaid; provided, that such actual possession be had or taken prior to August 1 next succeeding.

History: En. Sec. 3, p. 112, L. 1885; re-en. Sec. 225, 1st Div. Comp. Stat. 1887; re-en. Sec. 942, C. Civ. Proc. 1895; re-en. Sec. 6695, Rev. C. 1907; re-en. Sec. 9298, R.C.M. 1921; re-en. Sec. 9298, R.C.M. 1935; R.C.M. 1947, 93-4345.

81-8-314. Duty of county clerk and recorder of marks and brands to record papers. It is the duty of the county clerk and of the general recorder of marks and brands to file all papers deposited with them for that purpose, and required to be filed under the provisions of 81-8-311 through 81-8-313, and preserve the same as other records of their offices are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same.

History: En. Sec. 4, p. 112, L. 1885; re-en. Sec. 226, 1st Div. Comp. Stat. 1887; re-en. Sec. 943, C. Civ. Proc. 1895; re-en. Sec. 6696, Rev. C. 1907; re-en. Sec. 9299, R.C.M. 1921; re-en. Sec. 9299, R.C.M. 1935; amd. Sec. 11-164, Ch. 264, L. 1963; R.C.M. 1947, 93-4346.

81-8-315. Sale of property under supplementary writ. When an officer into whose hands a writ of execution is placed has served the same in accordance with 81-8-311, and made his return in accordance with the facts, at any time thereafter, within the time limited as hereinbefore provided to hold the property taken or levied upon under such writ, another writ of execution may be issued, which must be supplementary to the first writ, and in pursuance of which the officer or person charged with the service thereof may sell the property held by the said first writ, as hereinbefore provided.

History: En. Sec. 5, p. 113, L. 1885; re-en. Sec. 227, 1st Div. Comp. Stat. 1887; re-en. Sec. 944, C. Civ. Proc. 1895; re-en. Sec. 6697, Rev. C. 1907; re-en. Sec. 9300, R.C.M. 1921; re-en. Sec. 9300, R.C.M. 1935; R.C.M. 1947, 93-4347.

Cross-References

Execution and return of writ, Title 25, ch. 13, part 4.

Part 4
Sale of Baby Animals

81-8-401. Certain dealings in baby animals unlawful. (1) Except as provided in subsection (2), it is unlawful for any person, firm, or corporation to:

(a) sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under 3 weeks of age, or rabbits under 2 months of age, as pets, toys, premiums, or novelties;

(b) color, dye, stain, or otherwise change the natural color of baby chickens, ducklings, or other fowl or rabbits; or

(c) bring or transport the same into the state.

(2) This section shall not be construed to prohibit the sale, dyeing, staining, or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl or such rabbits in proper facilities by breeders or stores engaged in the business of selling for purposes of breeding and raising.

History: **En. 3-2110 by Sec. 1, Ch. 233, L. 1974; R.C.M. 1947, 3-2110; amd. Sec. 1, Ch. 143, L. 1985.**

81-8-402. Penalties. Violation of 81-8-401 is a misdemeanor and any person, firm, or corporation, other than one excepted in 81-8-401(2), violating any of the provisions thereof is, upon conviction, subject to a fine not exceeding the sum of $100 or imprisonment for a period not exceeding 30 days, or both.

History: **En. 3-2111 by Sec. 2, Ch. 233, L. 1974; R.C.M. 1947, 3-2111; amd. Sec. 2, Ch. 143, L. 1985.**

Part 5
Sale of Registered Livestock

Part Cross-References

Livestock taxation provisions, Title 15, ch. 24, part 9.

81-8-501. Sale of animals under false registration certificates — changing markings — auctioneer. (1) No person, company, or corporation shall:

(a) sell to another person or persons any animal with a certificate of registration or breeding that does not belong to said animal;

(b) change in any way the certificate of registration or breeding of any animal;

(c) falsely represent any production record of any cow or of any dam specified in any registration certificate;

(d) change the markings of any animal with the intent to deceive the purchaser.

(2) This section shall not apply to any auctioneer or agent acting in good faith under the direction of the owner.

History: **En. Sec. 5, Ch. 6, L. 1913; re-en. Sec. 3355, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1933; re-en. Sec. 3355, R.C.M. 1935; R.C.M. 1947, 46-1205.**

81-8-502. Penalty. Any person, persons, company, or corporation violating 81-8-501 shall be punished by a fine of not less than $25 or more than $500 or by imprisonment of not less than 10 days or more than 6 months or by both fine and imprisonment.

History: **En. Sec. 6, Ch. 6, L. 1913; re-en. Sec. 3356, R.C.M. 1921; re-en. Sec. 3356, R.C.M. 1935; R.C.M. 1947, 46-1206.**

81-8-503. Expenditures for purebred livestock shows and sales. The boards of county commissioners of the several counties of the state of Montana may and they are hereby authorized to expend annually from the general fund of the county, not to exceed a sum equal to a levy of one-fourth mill on the taxable property of the county, for the purpose of conducting special purebred livestock shows and special purebred livestock sales within the county.

History: En. Sec. 1, Ch. 60, L. 1945; R.C.M. 1947, 46-2201.

81-8-504. Tax levy authorized. For the purpose of defraying the costs of such purebred livestock shows and such purebred livestock sales, the county commissioners are authorized and empowered to levy annually a tax not to exceed one-fourth mill on the taxable property of the county, in excess of the amount levied for county purposes, which taxes shall be paid into the general fund of the county.

History: En. Sec. 2, Ch. 60, L. 1945; R.C.M. 1947, 46-2202.

Part 6

Pork Research and Marketing (Repealed)

81-8-601 through 81-8-612. Repealed. Sec. 1, Ch. 21, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

81-8-601. En. 46-3101 by Sec. 1, Ch. 484, L. 1975; R.C.M. 1947, 46-3101.

81-8-602. En. 46-3102 by Sec. 2, Ch. 484, L. 1975; R.C.M. 1947, 46-3102.

81-8-603. En. 46-3103 by Sec. 4, Ch. 484, L. 1975; R.C.M. 1947, 46-3103; amd. Sec. 18, Ch. 444, L. 1983.

81-8-604. En. 46-3104 by Sec. 5, Ch. 484, L. 1975; R.C.M. 1947, 46-3104.

81-8-605. En. 46-3105 by Sec. 6, Ch. 484, L. 1975; R.C.M. 1947, 46-3105; amd. Sec. 1, Ch. 291, L. 1981.

81-8-606. En. 46-3106 by Sec. 7, Ch. 484, L. 1975; R.C.M. 1947, 46-3106.

81-8-607. En. 46-3107 by Sec. 8, Ch. 484, L. 1975; R.C.M. 1947, 46-3107; amd. Sec. 2, Ch. 291, L. 1981; amd. Sec. 1, Ch. 180, L. 1985.

81-8-608. En. 46-3108 by Sec. 9, Ch. 484, L. 1975; R.C.M. 1947, 46-3108.

81-8-609. En. 46-3109 by Sec. 10, Ch. 484, L. 1975; R.C.M. 1947, 46-3109; amd. Sec. 10, Ch. 14, L. 1979.

81-8-610. En. 46-3110 by Sec. 11, Ch. 484, L. 1975; R.C.M. 1947, 46-3110; amd. Sec. 3, Ch. 291, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 2, Ch. 180, L. 1985; amd. Sec. 13, Ch. 700, L. 1989.

81-8-611. En. 46-3111 by Sec. 12, Ch. 484, L. 1975; R.C.M. 1947, 46-3111.

81-8-612. En. 46-3112 by Sec. 13, Ch. 484, L. 1975; R.C.M. 1947, 46-3112.

81-8-613. Repealed. Sec. 4, Ch. 291, L. 1981.

History: En. 46-3113 by Sec. 14, Ch. 484, L. 1975; R.C.M. 1947, 46-3113.

Part 7

Quality Label

81-8-701. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

(2) "Continuous official inspection" means that an employee or a licensed representative of the department of agriculture or the department of livestock or the United States department of agriculture regularly and continuously examines the commodity as it is being packed so as to have knowledge of the quality that goes into each package.

(3) "Person" includes an individual, partnership, association, union, or corporation.

History: En. Sec. 5, Ch. 290, L. 1947; amd. Sec. 43, Ch. 310, L. 1974; R.C.M. 1947, 3-2505.

81-8-702. Montana quality label. The department of livestock may make use of an outline map of the state of Montana and the word "Montana", printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products, by a person who has availed himself of the continuous official inspection service offered by the department of livestock, as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana", when made use of under this part, shall be known as the "Montana quality label". When an authorized department, agent, or officer of the United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between the department of livestock and the department, agency, or officer of the United States.

History: En. Sec. 1, Ch. 290, L. 1947; amd. Sec. 39, Ch. 310, L. 1974; R.C.M. 1947, 3-2501.

81-8-703. Limitation on use of label. The Montana quality label may not be used except under the rules made for its use by the department of livestock, and it may not be used on the label, tag, seal, container, or product of a farm, factory, mill, or other producing, processing, packing, preparing, or dressing establishment unless the product is produced, processed, packed, prepared, or dressed under continuous official inspection.

History: En. Sec. 2, Ch. 290, L. 1947; amd. Sec. 40, Ch. 310, L. 1974; R.C.M. 1947, 3-2502.

81-8-704. Procurement and use of labels — information concerning — disposal of moneys. The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them, sufficient to supply the demand for them. The department may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has availed himself of the continuous official inspection service. This part, however, does not preclude the department from permitting, under its rules, a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared the labels, tags, or seals to be used on his own product or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers which have been subject to continuous inspection, if the labels, tags, seals, stamps, or other devices are of a design which the department prescribes. The department of livestock may, in cooperation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it and to popularize its use. All moneys derived from furnishing the labels, tags, and seals or from permitting the use of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963; amd. Sec. 41, Ch. 310, L. 1974; R.C.M. 1947, 3-2503.

Cross-References

State treasury general fund structure, 17-2-102.

81-8-705. Wrongful use of label — penalty — injunction — prosecutions. (1) A person who uses the Montana quality label in violation of this part, or who, with the intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on the label, tag, seal, container, sign, or otherwise on any product which is sold or offered for sale or who uses the Montana quality label or, with intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on or in connection with an offer to sell or advertisement for the sale or use of any product which does not in fact lawfully bear the Montana quality label is guilty of a misdemeanor and shall be fined not less than $10 or more than $500.

(2) The word "Montana" may not be used on a brand or label not of No. 1 quality, its equivalent, or better.

(3) A district court in this state has jurisdiction to enjoin the use of the Montana quality label or an imitation, counterfeit, or likeness thereof used in violation of this part.

(4) The department of livestock may cause prosecutions for violations of this part, as well as the injunction proceedings under this section, to be instituted through the attorneys for the state or the counties and cities or otherwise in its discretion.

History: En. Sec. 4, Ch. 290, L. 1947; amd. Sec. 42, Ch. 310, L. 1974; R.C.M. 1947, 3-2504.

Cross-References

General duties of Attorney General, 2-15-501.

General duties of city attorney, 3-11-301; Title 7, ch. 4, part 46.

General duties of County Attorney, 7-4-2716, 7-4-2717.

Part 8

Beef Research and Marketing (Repealed. Sec. 21, Ch. 166, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

81-8-801. En. Sec. 1, Ch. 491, L. 1981.

81-8-802. En. Sec. 2, Ch. 491, L. 1981.

81-8-803. En. Sec. 3, Ch. 491, L. 1981.

81-8-804. En. Sec. 4, Ch. 491, L. 1981; amd. Sec. 1, Ch. 140, L. 1987.

81-8-805. En. Sec. 5, Ch. 491, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 14, Ch. 700, L. 1989.

Part 9

Beef Promotion and Marketing

81-8-901. Beef promotion and marketing — powers and duties of department. The department shall:

(1) cooperate and contract with the Montana beef council for collecting an assessment of $1 for each head of Montana livestock as established in the national Beef Promotion and Research Act of 1985, also referred to as the national beef check-off. Any contract agreed to between the department and the beef council must reimburse the department for all expenses incurred through the collection activities.

(2) adopt rules necessary for the administration of this section.

History: En. Sec. 1, Ch. 102, L. 1995.

Cross-References

Department of Livestock, 2-15-3101.

81-8-902. Department not liable for collection of assessment — inspection. (1) The department and its agents and employees are not responsible or liable for the collection or payment of money due to the Montana beef council pursuant to 81-8-901(1) if 81-8-901 and this section are carried out in good faith.

(2) The department may not refuse to inspect livestock if the livestock owner refuses to pay the assessment imposed under 81-8-901(1).

History: En. Sec. 2, Ch. 102, L. 1995.

CHAPTER 9

SLAUGHTER

Part 1 — Butchers and Meat Peddlers

81-9-101. Repealed.
81-9-102. Repealed.
81-9-103. Repealed.
81-9-104 through 81-9-110 reserved.
81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle to exhibit hides.
81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary.
81-9-113. Fees for inspection.
81-9-114. Duty to report violations.
81-9-115. Unlawful to purchase uninspected hide or carcass — exception.
81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation.
81-9-117. Repealed.
81-9-118. Penalties for violation or falsifying records.

Part 2 — Slaughterhouses Meat and Poultry Inspection

81-9-201. Meat establishment license — fees and renewals.
81-9-202. Exceptions of certain producers of meats.
81-9-203 through 81-9-207. Repealed.
81-9-208 through 81-9-215 reserved.
81-9-216. Short title.
81-9-217. Definitions.
81-9-218. Exemptions.
81-9-219. Application.
81-9-220. Rules.
81-9-221 through 81-9-225 reserved.
81-9-226. Chief meat inspector — deputies — qualifications.

81-9-227. Application for state meat inspection service — assignment of establishment number.
81-9-228. Inspection stamps.
81-9-229. Assignment of inspectors.
81-9-230. Antemortem and postmortem inspection required.
81-9-231. Condemnation and appeal.
81-9-232. Regulation of equine, game farm animal, or rabbit carcasses or products.
81-9-233. Cooperation with state and federal authorities.
81-9-234. Violations — penalties.
81-9-235. Suspension or revocation of inspection service or establishment number — hearing — appeal.
81-9-236. Injunction.

Part 3 — Rendering or Disposal Plants

81-9-301. Licensing of rendering or disposal plants.
81-9-302. Power of department to adopt and enforce rules.
81-9-303. Power of department to restrain operation of rendering plant.
81-9-304. Power of department to revoke license of rendering plant.
81-9-305. Power to administer oaths, subpoena witnesses, and receive evidence.
81-9-306. Penalty for violation.
81-9-307 through 81-9-310 reserved.
81-9-311. Dead or fallen animal rendering plants — definitions.
81-9-312. Identification tags.
81-9-313. Dead or fallen animal records.
81-9-314. Animals to be tagged.
81-9-315. Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation.
81-9-316. Disposal of hides — inspection — filing of record.
81-9-317. Penalty.

Part 4 — Hide Dealers

81-9-401. Definitions.
81-9-402. Hide certificate — identification.
81-9-403. Seizure and sale of hides when ownership cannot be determined — disposition of proceeds.
81-9-404 through 81-9-410 reserved.
81-9-411. Hide dealer or buyer's license fee — disposition of proceeds.
81-9-412. License revocation.
81-9-413 through 81-9-420 reserved.
81-9-421. Falsifying hide certificate or failure to affix tag deemed a misdemeanor.
81-9-422. Acting without a license a misdemeanor.
81-9-423. Mutilation or concealment of hides a felony.
81-9-424. Repealed.

Chapter Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

Livestock per capita tax levy, 15-24-921.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Adulterated food, 50-31-202.

Food manufacturing establishment defined not to include slaughterhouse or packing plant, 50-50-102.

Frozen food lockers, Title 50, ch. 50, part 4.

Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

Part 1
Butchers and Meat Peddlers

81-9-101. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 1, Ch. 172, L. 1931; re-en. Sec. 3298.16, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1943; amd. Sec. 86, Ch. 310, L. 1974; R.C.M. 1947, 46-501; amd. Sec. 1, Ch. 234, L. 1979.

81-9-102. Repealed. Sec. 24, Ch. 577, L. 1987.

History: (1) thru (5)En. Sec. 2, Ch. 172, L. 1931; re-en. Sec. 3298.17, R.C.M. 1935; amd. Sec. 2, Ch. 42, L. 1943; Sec. 46-502, R.C.M. 1947; (6)En. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959; Sec. 46-504, R.C.M. 1947; R.C.M. 1947, 46-502, 46-504(part).

81-9-103. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 8, Ch. 172, L. 1931; re-en. Sec. 3298.23, R.C.M. 1935; R.C.M. 1947, 46-512.

81-9-104 through 81-9-110 reserved.

81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle to exhibit hides. (1) Every person or persons, firm, corporation, or association slaughtering cattle for its own use must before selling, destroying, or otherwise disposing of the hide or hides from such cattle have the same inspected by an officer authorized to make such inspection and secure a certificate of inspection as herein provided for.

(2) It shall be unlawful for any person or persons, firm, corporation, or association to sell, offer for sale, destroy, or otherwise dispose of any hide or hides from slaughtered cattle which have not been inspected and identified by an authorized inspector.

(3) It shall be the duty of any person or persons, firm, corporation, or association slaughtering cattle, for his own use or otherwise, upon demand of an authorized inspector, to exhibit the hide or hides of such animal or animals for inspection or certificate issued by a hide buyer or some evidence of inspection by an authorized inspector.

History: En. Sec. 4, Ch. 172, L. 1931; re-en. Sec. 3298.19, R.C.M. 1935; amd. Sec. 1, Ch. 47, L. 1939; amd. Sec. 2, Ch. 37, L. 1961; R.C.M. 1947, 46-508.

81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary. (1) All slaughtering establishments required to be licensed under 81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for those animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of such animal shall be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name and address of the establishment or person, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt

for the bill of sale. The receipt shall describe the balance of the cattle covered by the original bill of sale.

(4) Any person who kills beef or veal in good faith for his own use shall not be required to have such meat inspected or stamped.

History: Ap.p. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 37, L. 1961; amd. Sec. 87, Ch. 310, L. 1974; Sec. 46-503, R.C.M. 1947; Ap.p. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959; Sec. 46-504, R.C.M. 1947; R.C.M. 1947, 46-503, 46-504(part); amd. Sec. 2, Ch. 234, L. 1979; amd. Sec. 19, Ch. 577, L. 1987.

81-9-113. Fees for inspection. The state or deputy state stock inspector making the inspection required by 81-9-112 shall collect a fee established by the department for each head inspected, plus all necessary expenses. State stock inspectors shall promptly remit all fees and expenses collected under this section to the department for deposit in the state special revenue fund. Deputy state stock inspectors shall keep their fees and expenses.

History: En. Sec. 2, Ch. 78, L. 1941; R.C.M. 1947, 46-505; amd. Sec. 3, Ch. 234, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 19, Ch. 444, L. 1983.

81-9-114. Duty to report violations. A person required to be licensed under 81-9-201 shall report any violation of 81-9-112 to the department or the sheriff of the county where the violation occurred and of which the person has knowledge. Upon failure to do so, the person shall suffer a revocation of his license and no license shall again be issued to the person until the expiration of 1 year from the date of revocation.

History: En. Sec. 4, Ch. 78, L. 1941; R.C.M. 1947, 46-507; amd. Sec. 20, Ch. 577, L. 1987; amd. Sec. 1, Ch. 200, L. 1989.

81-9-115. Unlawful to purchase uninspected hide or carcass — exception. No person, firm, corporation, or association may purchase the hide or carcass or any part thereof of any beef or veal without the inspection or identification herein provided for. The provision of this section does not apply to any person who purchases from a licensed meat establishment beef or veal in quantities less than one quarter of an animal.

History: En. Sec. 5, Ch. 172, L. 1931; re-en. Sec. 3298.20, R.C.M. 1935; R.C.M. 1947, 46-509; amd. Sec. 21, Ch. 577, L. 1987.

81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation. Any officer having authority to make the inspection herein provided for may enter into and inspect meat establishments required to be licensed under 81-9-201 or places where beef is handled in quantities, for the purpose of determining whether the provisions of this part have been complied with. In case meat is found which is being held in violation of the provisions of this part, the officers may seize the same. All meat so seized shall be sold under the direction of a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds shall be paid to the county treasurer of the county in which said meat is seized for the benefit of the general fund of said county.

History: En. Sec. 6, Ch. 172, L. 1931; re-en. Sec. 3298.21, R.C.M. 1935; R.C.M. 1947, 46-510; amd. Sec. 22, Ch. 577, L. 1987.

81-9-117. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 7, Ch. 172, L. 1931; re-en. Sec. 3298.22, R.C.M. 1935; R.C.M. 1947, 46-511.

81-9-118. Penalties for violation or falsifying records. Any person who violates any of the provisions of this part or who willfully falsifies any of the records required by this part to be kept shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by such fine and imprisonment for the first offense and for each subsequent offense shall be deemed guilty of a felony and punished by a fine of not more than $50,000 or imprisonment in the state prison for not less than 1 year or more than 5 years, or both.

History: En. Sec. 9, Ch. 172, L. 1931; re-en. Sec. 3298.24, R.C.M. 1935; R.C.M. 1947, 46-513; amd. Sec. 7, Ch. 198, L. 1981.

Part 2

Slaughterhouses Meat and Poultry Inspection

Part Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

Regulation of location of businesses, factories, and steam boilers, 7-21-4204.

81-9-201. Meat establishment license — fees and renewals. (1) It is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry or processing, storing, or wholesaling the meat products of either without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

History: En. Sec. 26, Ch. 262, L. 1921; re-en. Sec. 3285, R.C.M. 1921; re-en. Sec. 3285, R.C.M. 1935; amd. Sec. 79, Ch. 310, L. 1974; amd. Sec. 22, Ch. 12, L. 1977; R.C.M. 1947, 46-235; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 20, Ch. 444, L. 1983; amd. Sec. 23, Ch. 577, L. 1987; amd. Sec. 18, Ch. 366, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 366 in (2), in first sentence after "expire", substituted "each year on the anniversary date established by rule by the board of review established in 30-16-302 and must" for "on December 31 of the year in which they are issued and shall"; and made minor changes in style.

81-9-202. Exceptions of certain producers of meats. (1) The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of public health and human services for the business of production, storage, or transportation of these food products.

(2) This section does not limit the:

(a) supervision or regulation by the department of public health and human services of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those facilities; or

(b) duties imposed by law on the department of public health and human services to make sanitary rules for the eradication or control of an epidemic of human disease that may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R.C.M. 1921; re-en. Sec. 3283, R.C.M. 1935; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977; R.C.M. 1947, 46-233(part); amd. Sec. 349, Ch. 418, L. 1995; amd. Sec. 549, Ch. 546, L. 1995.

81-9-203 through 81-9-207. Repealed. Sec. 24, Ch. 577, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

81-9-203. (1)En. Sec. 10, Ch. 262, L. 1921; re-en. Sec. 3269, R.C.M. 1921; re-en. Sec. 3269, R.C.M. 1935; amd. Sec. 62, Ch. 310, L. 1974; Sec. 46-216, R.C.M. 1947; (2) thru (4)En. Sec. 7, Ch. 130, L. 1911; re-en. Sec. 2584, R.C.M. 1921; re-en. Sec. 2584, R.C.M. 1935; Sec. 27-107, R.C.M. 1947; R.C.M. 1947, 27-107, 46-216.

81-9-204. En. Sec. 1, p. 163, L. 1901; re-en. Sec. 8492, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1917; re-en. Sec. 11243, R.C.M. 1921; re-en. Sec. 11243, R.C.M. 1935; Sec. 94-35-172, R.C.M. 1947; redes. 46-247 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 199, Ch. 310, L. 1974; R.C.M. 1974, 46-247.

81-9-205. En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

81-9-206. (1)En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; Sec. 46-238, R.C.M. 1947; (2)En. Sec. 2, Ch. 39, L. 1917; re-en. Sec. 11244, R.C.M. 1921; re-en. Sec. 11244, R.C.M. 1935; 94-35-173, R.C.M. 1947; redes. 46-248 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 12, L. 1977; Sec. 46-248, R.C.M. 1947; R.C.M. 1947, 46-238, 46-248.

81-9-207. En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

81-9-208 through 81-9-215 reserved.

81-9-216. Short title. Sections 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 may be cited as the "Meat and Poultry Inspection Act".

History: En. Sec. 1, Ch. 577, L. 1987.

81-9-217. Definitions. As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the following definitions apply:

(1) "Adulterated" means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; provided that the meat that is not otherwise considered adulterated under subsection (1)(c), (1)(d), or (1)(e) of this section is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted therefrom, any substance has been substituted wholly or in part therefor, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.

(2) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

(3) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law reads on October 1, 1987.

(4) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and game farm animals as defined in 87-4-406 whether alive or dead.

(5) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(6) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products.

(7) "Misbranded" means the term applied to meat:

(a) if its labeling is false or misleading in any particular;

(b) if it is offered for sale under the name of another food;

(c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food being imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.

(f) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to appear on the label is not prominently placed thereon, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:

(i) it conforms to the definition and standard; and

(ii) its label bears the name of the food specified in the definition and standard and, insofar as required by the rules, the common names of optional ingredients present in such food, other than spices, flavoring, and coloring;

(h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form as the rules specify, a statement that it falls below the standard;

(i) if it is not subject to the provisions of subsection (7)(g), unless its label bears:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(j) if it purports to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (k) is impracticable, exemptions must be established by rules promulgated by the board; or

(l) if it fails to bear directly thereon and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information as the board may require to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(8) "Official establishment" means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(9) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" have the same meanings as provided in 21 U.S.C. 321.

(10) "Poultry" means any domesticated bird, whether alive or dead.

(11) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

History: En. Sec. 2, Ch. 577, L. 1987.

Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

81-9-218. Exemptions. (1) The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

(a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for his own personal or household use; and

(b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food.

(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of such livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner or members of his household or his nonpaying guests or employees is exempt from 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, provided the carcasses, parts, or meat food products or containers of such articles are:

(a) kept separate from carcasses, parts, or meat food products prepared for sale;

(b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and

(c) prepared and packaged in a sanitary manner and in a sanitary facility.

History: En. Sec. 11, Ch. 577, L. 1987; amd. Sec. 2, Ch. 200, L. 1989.

81-9-219. Application. The provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons, establishments, animals, and articles regulated under the Federal Meat Inspection Act, 21 U.S.C. 601 through 695, or the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on October 1, 1987, only to the extent provided for therein.

History: En. Sec. 16, Ch. 577, L. 1987.

81-9-220. Rules. The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

(1) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;

(2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as "Montana Inspected and Passed" if they are found upon inspection not to be adulterated;

(3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;

(4) set standards for ingredients of livestock products, meat, and poultry products;

(5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

(6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;

(7) set standards for the filling of containers for meat, livestock products, and poultry products;

(8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

(9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled therein;

(10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or his inspectors at any reasonable time; and

(12) prescribe additional standards, methods, and procedures as are necessary to effect the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

History: En. Sec. 4, Ch. 577, L. 1987.

Cross-References

Montana Administrative Procedure Act — adoption and publications of rules, Title 2, ch. 4, part 3.

81-9-221 through 81-9-225 reserved.

81-9-226. Chief meat inspector — deputies — qualifications. (1) There is a chief meat inspector, who must be appointed by the board and shall serve at its pleasure.

(2) The chief shall supervise the state meat inspection program established in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 and shall enforce the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to assure the public that only pure, wholesome, and unadulterated meat or meat food products are offered for sale.

(3) Upon recommendation of the chief, the board shall appoint veterinary meat inspectors and lay meat inspectors, who must be responsible to the chief and who shall conduct antemortem and postmortem inspections, enforce sanitary requirements, and perform other necessary meat inspection duties.

(4) An inspector assigned to an official establishment may not be related to the management of the establishment or have any financial interest therein.

History: En. Sec. 3, Ch. 577, L. 1987; amd. Sec. 3, Ch. 200, L. 1989.

81-9-227. Application for state meat inspection service — assignment of establishment number. (1) Any meat establishment licensed under 81-9-201 may apply to the board for state meat and poultry inspection service. The application must include:

(a) the name and address of the establishment;

(b) the type of establishment;

(c) a complete description of the facilities and equipment;

(d) the day of the week and hours of the day when the establishment is in operation; and

(e) other information required by the chief.

(2) The chief, upon receipt of the application, shall inspect the applicant's facilities and equipment. If the establishment is found to be clean and sanitary and if it meets the requirements of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the board shall authorize the granting of state meat inspection service to the applicant. The board shall then assign an official establishment number to the approved establishment to be used to mark the meat of the carcasses and parts of carcasses that are offered for sale.

History: En. Sec. 5, Ch. 577, L. 1987.

81-9-228. Inspection stamps. (1) The board shall provide meat inspection stamps to all official establishments, which must contain the words "Montana Inspected and Passed". The inspection stamps must be designed by the board so as to be not in conflict with inspection stamps of the U.S. department of agriculture.

(2) Approved official establishments may use symbols of the inspection stamps on the processed meats and meat food products they offer for sale if they are in compliance with the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(3) The meat inspection stamps must at all times be under the jurisdiction of the chief.

History: En. Sec. 6, Ch. 577, L. 1987; amd. Sec. 77, Ch. 83, L. 1989.

81-9-229. Assignment of inspectors. (1) The chief shall assign inspectors to each official establishment and may assign one inspector to two or more establishments.

(2) No establishment may slaughter or process any cattle, buffalo, sheep, swine, goats, or poultry unless there is an assigned inspector present. The hours of the day and days of each week, including holidays or weekends, when the establishment is slaughtering or processing meat must be satisfactorily arranged between the chief and each establishment. Establishments shall pay overtime fees to the board when services are rendered in excess of 8 hours a day or on holidays or weekends.

History: En. Sec. 7, Ch. 577, L. 1987.

81-9-230. Antemortem and postmortem inspection required. (1) Official establishments must have an antemortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter for the purpose of eliminating all unfit animals and segregating for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on postmortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals which after inspection are permitted to be slaughtered must be handled separately from the regular kill and given a special postmortem examination.

(2) Official establishments must have a postmortem inspection. The postmortem inspection must be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of his inspectors may have a laboratory designated by the board make pathogenic examination of animals or parts thereof for completion of antemortem or postmortem inspection.

History: **En. Sec. 8, Ch. 577, L. 1987.**

81-9-231. Condemnation and appeal. The inspector at an official establishment shall condemn all diseased or otherwise unfit carcasses and parts of carcasses, including the viscera. The condemned parts must be removed from the slaughtering facilities of the plant in equipment designated for that purpose and must be destroyed for food purposes under the supervision of the inspector. If an establishment wishes to appeal a decision of an inspector as to carcasses or parts of carcasses that have been condemned, the establishment may appeal the decision to the chief or any veterinarian the chief may designate. If the establishment is not satisfied and wishes to make a further appeal, it may submit an appeal to the board, whose decision is final unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located.

History: **En. Sec. 9, Ch. 577, L. 1987.**

81-9-232. Regulation of equine, game farm animal, or rabbit carcasses or products. (1) Equines, game farm animals, and rabbits and their carcasses, parts thereof, and meat food products must be slaughtered and prepared in establishments separate from the establishments where cattle, buffalo, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, or meat food products are prepared.

(2) The board may by rule otherwise limit the entry of equine, game farm animal, or rabbit carcasses, parts of carcasses, meat food products, and other materials into any establishment where inspection under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 is maintained, under conditions as it may prescribe to assure that allowing the entry of the articles into inspected establishments will be consistent with the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

History: **En. Sec. 10, Ch. 577, L. 1987.**

Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

81-9-233. Cooperation with state and federal authorities. (1) In carrying out the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the chief shall consult with the department of environmental quality and any appropriate state laboratory in matters relating to the potability of water, to sewage systems, and to other sanitary conditions of slaughtering and meat processing establishments that might endanger public health. If an official establishment fails to meet minimum applicable requirements of the department of environmental quality, inspection service to the establishment must be suspended as provided in 81-9-235 until the condition is remedied.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program.

History: En. Sec. 12, Ch. 577, L. 1987; amd. Sec. 350, Ch. 418, L. 1995; amd. Sec. 550, Ch. 546, L. 1995.

81-9-234. Violations — penalties. (1) Except as provided in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, no person may:

(a) slaughter livestock or poultry or prepare livestock products or poultry products for human consumption;

(b) sell or transport adulterated, misbranded, condemned, or uninspected meats, livestock products, or poultry products;

(c) falsely represent that an article has been inspected and passed or is exempted under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or knowingly make a false statement in any certificate provided for by rules prescribed by the board;

(d) sell or transport slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed;

(e) fail to keep any records required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236;

(f) forge an official stamp, mark, or certificate;

(g) use, alter, deface, detach, or destroy an official stamp, mark, or certificate without authorization;

(h) fail to use or fail to detach, deface, or destroy an official stamp, mark, or certificate contrary to rules prescribed by the board;

(i) knowingly possess a counterfeit certificate, stamp, or label or the carcass or parts of the carcass of an animal bearing a counterfeit or improperly altered official mark;

(j) sell or transport an equine carcass or parts thereof unless they are conspicuously marked or otherwise identified to show the kind of animal from which they were derived;

(k) buy, sell, or transport livestock products or poultry products not intended for human food unless they are naturally inedible by humans or are denatured or identified as required by rules prescribed by the board;

(l) engage in the business of buying, selling, or transporting dead, dying, disabled, or diseased animals or parts of the carcasses of animals that died otherwise than by slaughter, or buy, sell, or transport dead, dying, disabled, or diseased livestock or poultry or the products of such livestock or poultry that died otherwise than by slaughter unless in accordance with rules adopted under 81-9-302 to assure that such livestock or poultry or the unwholesome parts or products thereof will be prevented from being used for human food purposes.

(2) A person who violates 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or rules adopted under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 for which no other criminal penalty is provided is guilty of a

misdemeanor and upon conviction is punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000, or both. If the violation involves intent to defraud or any distribution or attempted distribution of an article that is adulterated, such person is guilty of a felony and upon conviction is punishable by imprisonment for not more than 3 years or by a fine of not more than $10,000, or both.

History: **En. Sec. 13, Ch. 577, L. 1987.**

81-9-235. Suspension or revocation of inspection service or establishment number — hearing — appeal. (1) Any license issued by the board or any state meat inspection service or establishment number may be suspended or revoked by the board for noncompliance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or any rule adopted pursuant to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(2) State meat inspection service or establishment numbers may be suspended or revoked only after a hearing before the board upon reasonable notice. Notice must be given the licensee by service of the complaint upon him.

(3) The decision of the board is final in any matter relating to renewal, suspension, or revocation of state meat inspection service or an establishment number unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located. The court shall hear and determine the matter within 10 days after the date of filing the appeal. After such decision, the person aggrieved may, in compliance with the statutory provisions relating thereto, appeal the decision of the district court to the supreme court of the state, but the suspension or revocation of state meat inspection service or an establishment number remains in effect pending the outcome of the appeal.

History: **En. Sec. 14, Ch. 577, L. 1987.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

81-9-236. Injunction. In addition to remedies provided in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the board is authorized to apply to the district court for and the court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating a provision of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, whether or not there exists an adequate remedy at law.

History: **En. Sec. 15, Ch. 577, L. 1987.**

Cross-References

Injunctions, Title 27, ch. 19.

Part 3

Rendering or Disposal Plants

81-9-301. Licensing of rendering or disposal plants. (1) It is unlawful to operate in this state a rendering or disposal plant or establishment that is intended to be operated for the disposal of bodies or parts of bodies of animals or fowl in any manner, except for human consumption, without first securing a license from the department of livestock.

(2) The license expires on December 31 of the year in which it is issued. The department shall establish a fee to be charged for licenses issued under 81-9-301 through 81-9-306.

(3) All license fees collected shall be paid into the state special revenue fund for the use of the department.

History: **En. Sec. 1, Ch. 148, L. 1949; amd. Sec. 159, Ch. 310, L. 1974; R.C.M. 1947, 46-2401; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 21, Ch. 444, L. 1983.**

Cross-References

State treasury general fund structure, 17-2-102.

81-9-302. Power of department to adopt and enforce rules. The department may adopt and enforce rules or orders necessary for the supervision, control, and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and the supervision, control, and inspection of equipment of the plant, where the rendering or disposal plants or establishments are intended to be operated for the disposal of bodies or parts of bodies of dead animals or fowl in any manner, except for human consumption. Vehicles and equipment used for the transportation of these bodies or parts of bodies are subject to the rules or orders adopted by the department which are applicable to the vehicles or equipment. Sections 81-9-301 through 81-9-306 do not apply to the slaughtering and handling of animals or fowl for human consumption.

History: **En. Sec. 2, Ch. 148, L. 1949; amd. Sec. 160, Ch. 310, L. 1974; R.C.M. 1947, 46-2402.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-9-303. Power of department to restrain operation of rendering plant. (1) The department may restrain the operation of a rendering or disposal plant or establishment engaged in the collection or handling of the bodies or parts of bodies of dead animals or fowl, where the operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on 5 days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where in the discretion of the department the violation constitutes a menace to public health requiring immediate and summary abatement.

(2) The licensee may appeal to the district court on giving written notice of appeal to the restraining authority within 10 days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement.

(3) Where the restraining order is issued after a hearing, the hearing before the district court is on the record, together with any additional evidence offered. Where the order is issued without hearing, the hearing before the district court is on evidence offered at the hearing.

(4) Where the appeal is from an order issued after hearing, the appellant shall pay the cost of the transcript, which must be filed not more than 30 days

from the date of filing the notice of appeal. However, the court may, in its discretion, extend the time for filing the transcript.

History: **En. Sec. 3, Ch. 148, L. 1949; amd. Sec. 161, Ch. 310, L. 1974; R.C.M. 1947, 46-2403.**

Cross-References

Restraining order, Title 27, ch. 19, part 3.

81-9-304. Power of department to revoke license of rendering plant. A license to operate a rendering or disposal plant may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with any statute of this state or rules or orders of the department and on hearing before the department, after 10 days' written notice. Service and filing of a notice of appeal to a district court stays execution of the order.

History: **En. Sec. 4, Ch. 148, L. 1949; amd. Sec. 162, Ch. 310, L. 1974; R.C.M. 1947, 46-2404.**

81-9-305. Power to administer oaths, subpoena witnesses, and receive evidence. Hearings held under 81-9-301 through 81-9-306 for either revocation of licenses or to restrain operation shall be held by the department, and the department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out 81-9-301 through 81-9-306.

History: **En. Sec. 5, Ch. 148, L. 1949; amd. Sec. 163, Ch. 310, L. 1974; R.C.M. 1947, 46-2405.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

81-9-306. Penalty for violation. Operation of a rendering or disposal plant or establishment without a license from the department or operation of a rendering or disposal plant or establishment in violation of a restraining order or after revocation of a license constitutes a misdemeanor, punishable by a fine of not less than $50 or more than $250 for each day of illegal operation.

History: **En. Sec. 6, Ch. 148, L. 1949; amd. Sec. 164, Ch. 310, L. 1974; R.C.M. 1947, 46-2406.**

81-9-307 through 81-9-310 reserved.

81-9-311. Dead or fallen animal rendering plants — definitions. When used in 81-9-311 through 81-9-317, the following definitions apply:

(1) "Dead or fallen animal" means the carcass or dead body of a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human consumption and is to be salvaged for the purpose of obtaining the hide and grease or fat from the animal.

(2) "Licensed rendering plant" and "licensed renderer" mean a person, partnership, association, or corporation which is engaged in the disposal of dead or fallen animals and which is licensed by the department.

History: **En. Sec. 1, Ch. 87, L. 1949; amd. Sec. 165, Ch. 310, L. 1974; R.C.M. 1947, 46-2407.**

Cross-References

Public nuisances, 45-8-111.

81-9-312. Identification tags. Licensed rendering plants shall provide themselves with serially-numbered metal identification tags of a size and design prescribed by the department and in a number series assigned by the department.

History: **En. Sec. 2, Ch. 87, L. 1949; amd. Sec. 166, Ch. 310, L. 1974; R.C.M. 1947, 46-2408.**

81-9-313. Dead or fallen animal records. (1) When a licensed renderer or his agent receives a dead or fallen animal, he shall present a dead or fallen animal record to the person, corporation, or association which has requested him to remove the dead or fallen animal. The record shall be on forms prescribed by the department and contain information the department may, by rule, require.

(2) The report shall be executed in quadruplicate. The original copy shall accompany the carcass and hide until the hide is officially inspected for marks and brands. The duplicate shall be retained by the licensed renderer for the time which the department in its discretion requires. The triplicate shall be filed within 7 days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or his agent. The quadruplicate shall be retained by the person, corporation, or association which requested removal of the dead or fallen animal.

History: **En. Sec. 3, Ch. 87, L. 1949; amd. Sec. 167, Ch. 310, L. 1974; R.C.M. 1947, 46-2409.**

81-9-314. Animals to be tagged. At the time of the execution of the dead or fallen animal record, provided for above, the licensed renderer or his agent who receives a dead or fallen animal shall tag such animal with one of the serially numbered identification tags provided in 81-9-312 and shall at the same time record the number of said tag in the proper space provided therefor on the dead or fallen animal record.

History: **En. Sec. 4, Ch. 87, L. 1949; R.C.M. 1947, 46-2410.**

81-9-315. Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation. (1) On demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, a licensed renderer or his agent who has received a dead or fallen animal shall produce for inspection of the officer an executed dead or fallen animal record identifying each dead or fallen animal which he is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable as provided in 81-9-317.

(2) Under no circumstances may a licensed renderer or his agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal shall be handled and disposed of in conformity with the rules of the department.

(3) If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or his agent were obtained by a commission of a felony, he may take the licensed renderer or his agent, as well as the vehicle, into custody and proceed with the licensed renderer or his agent to the

rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation shall be made.

History: En. Sec. 5, Ch. 87, L. 1949; amd. Sec. 168, Ch. 310, L. 1974; R.C.M. 1947, 46-2411.

Cross-References

Penalty for felony, 46-18-213.

81-9-316. Disposal of hides — inspection — filing of record. When a licensed renderer or his agent disposes of the hides from dead or fallen animals, the hides shall be handled and inspected for marks and brands in conformity with part 4 of this chapter. The sheriff, deputy sheriff, person designated by the board of county commissioners, or the agent of the department who makes the inspection for marks and brands in conformity with part 4 of this chapter shall complete the original dead or fallen animal record which accompanies the hide by inserting his inspector's tag number. He shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under part 4 of this chapter.

History: En. Sec. 6, Ch. 87, L. 1949; amd. Sec. 169, Ch. 310, L. 1974; amd. Sec. 55, Ch. 12, L. 1977; R.C.M. 1947, 46-2412.

81-9-317. Penalty. Any person who violates any of the provisions of 81-9-311 through 81-9-317 or who willfully falsifies any of the records required by 81-9-311 through 81-9-317 to be kept shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 or more than $250 or by imprisonment in the county jail for a period of not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 87, L. 1949; R.C.M. 1947, 46-2413.

Part 4
Hide Dealers

81-9-401. Definitions. (1) "Animal hide" means the hide of a bovine, equine, mule, ass, sheep, goat, or swine of any age, sex, or breed.

(2) "Hide certificate" means a certificate showing a transfer of ownership of animal hides.

(3) "Hide dealer" or "buyer" means, for the purpose of this part, every person, firm, corporation, or association engaged in the business of buying or selling animal hides. However, licensed slaughterhouses shall not be deemed hide dealers or buyers.

(4) "Inspector" means a state stock inspector or deputy state stock inspector, as defined in 81-3-201, appointed by the department of livestock.

(5) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 44, L. 1961; amd. Sec. 142, Ch. 310, L. 1974; Sec. 46-1101.1, R.C.M. 1947; (3)En. Sec. 1, Ch. 151, L. 1929; re-en. Sec. 3350.7, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1939; amd. Sec. 4, Ch. 44, L. 1961; Sec. 46-1106, R.C.M. 1947; R.C.M. 1947, 46-1101.1, 46-1106; amd. Sec. 1, Ch. 236, L. 1979.

81-9-402. Hide certificate — identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate, which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) The original certificate shall be sent by the party receiving the hide to the department within 5 days after purchase. One copy shall be retained by the seller; and one, by the hide buyer. On reasonable notice, an inspector or other agent of the department or a peace officer may inspect the hide certificate copy of the seller or buyer.

(3) The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide certificates, tags, and glue shall be furnished by the department at cost to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this part.

History: En. Sec. 2, Ch. 44, L. 1961; amd. Sec. 143, Ch. 310, L. 1974; amd. Sec. 45, Ch. 12, L. 1977; R.C.M. 1947, 46-1101.2; amd. Sec. 2, Ch. 236, L. 1979.

81-9-403. Seizure and sale of hides when ownership cannot be determined — disposition of proceeds. (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal, or hide of a beef or veal may seize and hold the hide when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection or when he finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If, within 15 days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling, to the department together with a full report of his investigation. The report shall contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds shall be deposited by the department with the state treasurer and credited to the stock estray fund, where it shall be subject to claim by a party showing proper proof of ownership in the same manner as provided in 81-4-605.

History: En. Sec. 1, Ch. 113, L. 1961; amd. Sec. 145, Ch. 310, L. 1974; R.C.M. 1947, 46-1114.

81-9-404 through 81-9-410 reserved.

81-9-411. Hide dealer or buyer's license fee — disposition of proceeds. Before engaging in business in this state, a hide dealer or buyer shall obtain a license from the department. The department shall establish an annual license fee to be charged for each established place of business at which the hide dealer or buyer purchases or deals in hides. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the state special revenue fund for the department. The license must be renewed January 1 of each year.

History: En. Sec. 2, Ch. 151, L. 1929; re-en. Sec. 3350.8, R.C.M. 1935; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965; amd. Sec. 144, Ch. 310, L. 1974; amd. Sec. 48, Ch. 12, L. 1977; R.C.M. 1947, 46-1107; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 444, L. 1983.

81-9-412. License revocation. Upon receipt of a certified copy of the judgment of conviction of any hide dealer or buyer for any violation of this part, the department may revoke the license of such person for 1 year commencing on the date of the licensee's conviction.

History: **En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.1(2).**

81-9-413 through 81-9-420 reserved.

81-9-421. Falsifying hide certificate or failure to affix tag deemed a misdemeanor. (1) Any person, firm, association, or corporation either selling or disposing of or purchasing hides in any manner who shall willfully or intentionally falsify a hide certificate covering such hides shall be deemed guilty of a misdemeanor.

(2) Any person who shall have received any hide as provided in this part without affixing the required identification tag shall be deemed guilty of a misdemeanor.

History: **En. Sec. 2, Ch. 61, L. 1923; re-en. Sec. 3350.2, R.C.M. 1935; amd. Sec. 4, Ch. 177, L. 1939; amd. Sec. 3, Ch. 44, L. 1961; R.C.M. 1947, 46-1102.**

Cross-References

Penalty for misdemeanor, 46-18-212.

81-9-422. Acting without a license a misdemeanor. Any person acting as a hide dealer or buyer without a license as required by this part is guilty of a misdemeanor.

History: **En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.1(1).**

Cross-References

Penalty for misdemeanor, 46-18-212.

81-9-423. Mutilation or concealment of hides a felony. Every person who knowingly mutilates, destroys, or conceals an animal hide for the purpose of removing evidence of ownership of such hide or the animal from which the hide was removed is guilty of a felony and punishable upon conviction thereof by a fine of not less than $500 or more than $5,000 or imprisonment in the state prison for not less than 1 year or more than 10 years, or both.

History: **Ap.p. Sec. 1, Ch. 76, L. 1923; re-en. Sec. 3350.4, R.C.M. 1935; amd. Sec. 46, Ch. 12, L. 1977; Sec. 46-1103, R.C.M. 1947; Ap.p. Sec. 3, Ch. 76, L. 1923; re-en. Sec. 3350.6, R.C.M. 1935; Sec. 46-1105, R.C.M. 1947; R.C.M. 1947, 46-1103, 46-1105; amd. Sec. 3, Ch. 236, L. 1979.**

81-9-424. Repealed. Sec. 1, Ch. 105, L. 1993.

History: **En. Sec. 2, Ch. 76, L. 1923; re-en. Sec. 3350.5, R.C.M. 1935; amd. Sec. 47, Ch. 12, L. 1977; R.C.M. 1947, 46-1104; amd. Sec. 11, Ch. 14, L. 1979.**

CHAPTERS 10 THROUGH 19

RESERVED

CHAPTER 20

POULTRY AND EGGS

Part 1 — Poultry

81-20-101. Poultry industry — powers and authority of department.
81-20-102. Injunctive remedies.
81-20-103. Violation.
81-20-104. Civil liability.

Part 2 — Eggs

81-20-201. Egg dealer's and egg grader's licenses — fee.
81-20-202. Remittance of fees.
81-20-203. Candling eggs intended for human consumption — candling defined.
81-20-204. Certificate of candling or packing.
81-20-205. Egg — when defined as unfit for human food.
81-20-206. Notice to purchaser of grade of eggs.
81-20-207. Rules to be adopted by department of livestock.
81-20-208. Penalties.
81-20-209. Revocation of license.

Chapter Cross-References

Town or city power to regulate inspection of foodstuffs and sale of meat and poultry, 7-21-4202.

Certain livestock exempt from taxation, 15-6-207.

Livestock per capita tax levy, 15-24-921.

Meat, poultry, and seafood to be sold by weight, 30-12-401.

Cock fights prohibited, 45-8-210.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Consideration of administrator's expertise, 81-1-303.

Meat and Poultry Inspection Act, 81-9-216, et seq.

Part 1

Poultry

81-20-101. Poultry industry — powers and authority of department. For the promotion and protection of the poultry industry and to prevent, control, and exterminate infectious, contagious, dangerous, and destructive diseases affecting poultry, the department shall:

(1) supervise the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by poultry and which, in the judgment of the department, is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine any poultry in this state when the poultry is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) foster, promote, and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and means of preventing, controlling, and exterminating diseases of poultry;

(3) adopt and enforce rules for the prevention and extermination of such diseases and perform all other acts and things as may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state;

(4) adopt and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting poultry in this state, including rules and orders necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state;

(5) adopt and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state.

History: En. Sec. 1, Ch. 161, L. 1929; re-en. Sec. 3267.1, R.C.M. 1935; amd. Sec. 57, Ch. 310, L. 1974; R.C.M. 1947, 46-209.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-20-102. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this part or rules adopted under 81-20-101, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

Cross-References

Provisions providing for injunctions, Title 27, ch. 19, part 3.

81-20-103. Violation. Any person, persons, firm, or corporation violating any provision of 81-20-101 or any rule or order promulgated by authority of the same or who shall obstruct or interfere with the performance of any duty or the exercise of any power hereby conferred shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 161, L. 1929; re-en. Sec. 3267.2, R.C.M. 1935; R.C.M. 1947, 46-210.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-20-104. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Damages, Title 27, ch. 1, part 2.

Part 2
Eggs

81-20-201. Egg dealer's and egg grader's licenses — fee. (1) A person may not buy, sell, or deal in eggs without first obtaining a license from the department of livestock for each establishment at which business is conducted. A licensee shall send to the department the reports that are requested by the department. The department shall establish a license fee for dealers buying eggs for sale at retail and for dealers buying eggs for resale at wholesale. All licenses must be posted in a conspicuous place in each place of business. Licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302.

(2) A person buying, selling, or dealing in eggs, a major portion of which are produced by the person's own fowl, or in amounts less than an average of 25 cases per month, is exempt from the requirements of this section.

(3) Wholesale and retail dealers who handle more than 25 cases of eggs per month supplying eggs to consumers must, when selling candled eggs, sell only eggs candled by or under the supervision of experienced and licensed graders. The department shall establish a fee for a grader's license. All candlers and graders must pass an examination required by the department. The license expires each year on the anniversary date established by rule by the board of review established in 30-16-302.

History: (1), (2)En. Sec. 1, Ch. 189, L. 1931; re-en. Sec. 2634.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. 1969; amd. Sec. 1, Ch. 310, L. 1974; amd. Sec. 1, Ch. 141, L. 1977; Sec. 3-2301, R.C.M. 1947; (3)En. Sec. 9, Ch. 151, L. 1939; re-en. Sec. 2634.13, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965; amd. Sec. 6, Ch. 310, L. 1974; amd. Sec. 5, Ch. 141, L. 1977; Sec. 3-2313, R.C.M. 1947; R.C.M. 1947, 3-2301, 3-2313; amd. Sec. 23, Ch. 444, L. 1983; amd. Sec. 19, Ch. 366, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 366 in (1), in fifth sentence after "expire", substituted "each year on the anniversary date established by rule by the board of review established in 30-16-302" for "March 31 each year after the date of issuance"; in (3), at end of fourth sentence after "expires", substituted "each year on the anniversary date established by rule by the board of review established in 30-16-302" for "March 31 each year after the date of issuance"; and made minor changes in style.

81-20-202. Remittance of fees. All license fees shall be remitted to the department of livestock which shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; re-en. Sec. 2634.2, R.C.M. 1935; amd. Sec. 42, Ch. 147, L. 1963; amd. Sec. 2, Ch. 310, L. 1974; R.C.M. 1947, 3-2302.

Cross-References

State treasury general fund structure, 17-2-102.

81-20-203. Candling eggs intended for human consumption — candling defined. Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of the eggs by an egg grader licensed pursuant to this part or shall purchase only eggs which have already been properly candled and graded under the supervision of an egg grader licensed pursuant to this part. The term "candling" as used in this part means the careful examination, in a partially dark room or place, of the whole egg by means of a strong light.

History: **En. Sec. 3, Ch. 189, L. 1931; re-en. Sec. 2634.3, R.C.M. 1935; amd. Sec. 2, Ch. 141, L. 1977; R.C.M. 1947, 3-2303.**

81-20-204. Certificate of candling or packing. Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him which have not been candled under supervision of a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 81-20-205. "Rejects" shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed in or on every case of eggs, if candled and graded, in a manner which permits its easy reading and shall state exact grade and size, date of candling or other date approved by the department of livestock, and name and address of packer. If not candled or graded the certificate should state "not candled or graded", the name of the dealer, and when packed. The certificate shall be printed in letters large enough to be easily read.

History: **En. Sec. 5, Ch. 189, L. 1931; re-en. Sec. 2634.5, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1939; amd. Sec. 3, Ch. 141, L. 1977; R.C.M. 1947, 3-2305.**

81-20-205. Egg — when defined as unfit for human food. (1) Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled" or "white rot" means an egg that is putrid or rotten.

(b) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

(c) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(d) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

(e) "Blood spot" is a spot of blood adhering to the yolk of an egg.

(f) "Bloody white" means an egg with a general reddish appearance due to blood mixed through it and which egg may show spots of blood floating in the white.

(g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than 48 hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated".

(h) "Meat spot" means that the egg has a speck of foreign matter adhering to the yolk or floating in the white.

(i) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.

(2) An egg that is smashed or broken so that the contents are leaking is unfit for human food.

(3) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act and rules promulgated under authority of this part are unfit for human food.

History: **En. Sec. 6, Ch. 189, L. 1931; re-en. Sec. 2634.6, R.C.M. 1935; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969; R.C.M. 1947, 3-2306.**

81-20-206. Notice to purchaser of grade of eggs. It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption without notifying the person purchasing or intending to purchase the eggs of the exact grade or quality and size or weight of the eggs, according to the standards prescribed by the department of livestock, by stamping or printing on the container of the eggs the grade or quality and size or weight and, if the eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where the eggs are offered or exposed for sale a placard or sign printed in letters 2 inches high giving the grade, quality, size, weight, and date of grading. This part does not affect the sale of eggs by the producers when the consumer purchases the eggs at the place of production.

History: En. Sec. 8, Ch. 189, L. 1931; re-en. Sec. 2634.8, R.C.M. 1935; amd. Sec. 5, Ch. 151, L. 1939; amd. Sec. 1, Ch. 71, L. 1973; amd. Sec. 3, Ch. 310, L. 1974; R.C.M. 1947, 3-2308.

81-20-207. Rules to be adopted by department of livestock. The department of livestock shall enforce this part and adopt rules necessary for the enforcement of this part, including rules for the processing, handling, and marketing of egg products whether shell, liquid, frozen, or dried.

History: En. Sec. 10, Ch. 189, L. 1931; re-en. Sec. 2634.10, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1969; amd. Sec. 5, Ch. 310, L. 1974; R.C.M. 1947, 3-2310.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-20-208. Penalties. Any person failing to comply with the provisions of this part or any rules adopted pursuant to this part is guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than $25 or more than $75. Upon conviction for the second or any subsequent violation of the foregoing provisions of this part the violator shall be fined not less than $50 or more than $200.

History: En. Sec. 11, Ch. 189, L. 1931; re-en. Sec. 2634.11, R.C.M. 1935; amd. Sec. 7, Ch. 151, L. 1939; amd. Sec. 4, Ch. 141, L. 1977; R.C.M. 1947, 3-2311.

81-20-209. Revocation of license. A license issued by the department of livestock under this part may be revoked by the department when the holder of the license fails to comply with the laws of this state which apply to the conduct of his business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, he is guilty of a misdemeanor and is subject to the penalties provided for in 81-20-208.

History: En. Sec. 10, Ch. 151, L. 1939; Sec. 2634.14, R.C.M. 1935; amd. Sec. 7, Ch. 310, L. 1974; R.C.M. 1947, 3-2314.

CHAPTER 21

DAIRY PRODUCTS

Part 1 — Regulation of Dairies Selling Milk or Cream for Public Consumption

81-21-101. Definitions.
81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.
81-21-103. Exceptions of certain producers of dairy products.
81-21-104. Injunctive remedies.

81-21-105. Penalty.
81-21-106. Civil liability.

Chapter Cross-References

Board of Milk Control, 2-15-3105.

City or town council power to regulate inspection of dairy products, 7-21-4202.

Measures to be used in sale of butter, oleomargarine, margarine, and fluid dairy products, 30-12-403, 30-12-404.

Dairy licensing — discrimination prohibited, 49-3-204.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Food manufacturing establishment defined not to include milk facilities or plants, 50-50-102.

Part 1

Regulation of Dairies Selling Milk or Cream for Public Consumption

81-21-101. Definitions. As used in this part, the following definitions apply:

(1) "Fluid milk plant" means a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) "Public consumption" means the use of milk or cream by the public for any purpose.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R.C.M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; re-en. Sec. 3282, R.C.M. 1935; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977; R.C.M. 1947, 46-232(part); amd. Sec. 1, Ch. 40, L. 1983.

81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The department shall establish license fees for the following facilities:

(a) condensed, evaporated, or powdered milk factory;

(b) fluid milk plant; and

(c) dairy.

(5) A person violating this section is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R.C.M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; re-en. Sec. 3282, R.C.M. 1935; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977; R.C.M. 1947, 46-232(part); amd. Sec. 24, Ch. 444, L. 1983.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

State treasury general fund structure, 17-2-102.

Penalty for misdemeanor, 46-18-212.

Licenses to producers, producer-distributors, distributors, and jobbers, 81-23-201.

81-21-103. Exceptions of certain producers of dairy products. (1) The owners or operators of dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of public health and human services for the business of production, storage, or transportation of these food products.

(2) This section does not limit:

(a) the supervision or regulation by the department of public health and human services of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those facilities; or

(b) the duties imposed by law on the department of public health and human services to make sanitary rules for the eradication or control of an epidemic of human disease that may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R.C.M. 1921; re-en. Sec. 3283, R.C.M. 1935; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977; R.C.M. 1947, 46-233(part); amd. Sec. 351, Ch. 418, L. 1995; amd. Sec. 551, Ch. 546, L. 1995.

Cross-References

Quarantine measures, 50-1-204.

Department of Public Health and Human Services authorized to adopt food standards, 50-31-201.

81-21-104. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this chapter or rules adopted under 81-2-102, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

Cross-References

Injunctions, Title 27, ch. 19.

81-21-105. Penalty. Any person, persons, firm, or corporation violating any provision of this chapter, or the rule or order promulgated by authority of 81-2-102, shall be guilty of a misdemeanor. Violations of this chapter shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; R.C.M. 1947, 46-238.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-21-106. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Damages, Title 27, ch. 1, part 2.

CHAPTER 22

MANUFACTURED DAIRY PRODUCTS

Part 1 — Administration

81-22-101. Definitions.
81-22-102. General authority of department.
81-22-103. New or amended rules — mailing — hearing — judicial review.
81-22-104. Enforcement of laws and rules — violation as misdemeanor.
81-22-105. Investigation of complaints and violations — injunction.
81-22-106. Names and addresses of producers furnished on request.
81-22-107. Use of inspections, tests, samples, etc., as evidence.
81-22-108. Antimonopoly statutes applicable.

Part 2 — Licensing Provisions

81-22-201. License required to operate manufactured dairy products plant.
81-22-202. Licensing of persons engaged in production of milk.
81-22-203. Renewal, suspension, or revocation of license — grounds — hearing — appeal to district court.
81-22-204. License required for milk or cream route.
81-22-205. Examination and licensing of persons engaged in testing.
81-22-206. Licensing of graders, weighers, and samplers.
81-22-207. License — issuance and penalty.
81-22-208. Licenses and schedule of license fees.
81-22-209. License requirements applicable.

Part 3 — Inspection

81-22-301. Tests and analyses — admissibility as evidence.
81-22-302. Taking and preservation of samples.
81-22-303. Sampling and testing by department.
81-22-304. Department's right of entry into dairy or plants for inspection — penalty.
81-22-305. Cooperative agreements with other agencies.

Part 4 — Sanitation, Quality, and Labeling Requirements

81-22-401. Grading of milk — condemnation of unsafe milk.
81-22-402. Employment of grader, weigher, and sampler — revocation of operator's license.
81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant.
81-22-404. Removal or destruction of products in case of potential health hazards.
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81-22-406. Products to be kept at safe temperature.
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81-22-408. Manufacturer's and wholesaler's or retailer's names to appear on package — use of codes and numbers permitted.
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81-22-411. Filled dairy products unlawful — exceptions.
81-22-412. Manufactured products to conform to standards of identity.
81-22-413. Pasteurization required.
81-22-414. Pasteurization apparatus and records.
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81-22-416. Milk and manufactured dairy products to conform to standards.
81-22-417. Making or selling products in violation of chapter prohibited — penalty.
81-22-418. Posting prices of butterfat required.
81-22-419. Requirements for containers and equipment.
81-22-420. Labeling of animal or vegetable fat contents on frozen desserts.
81-22-421. Labeling on manufactured dairy products to conform to requirements.

Part 5 — Records and Reports

81-22-501. Required records and reports — examination.
81-22-502. Monthly report of plant operator — penalty.
81-22-503. Buyers and plants to make records available to department.

Part 6 — Penalties

81-22-601. Penalties for violations.
81-22-602. Deceit in grade, measure, or test of milk and cream unlawful.

Chapter Cross-References

Special levies on commodities for commodity inspection, Art. XII, sec. 1, Mont. Const.

Butter, oleomargarine, and margarine, 30-12-403.

Fluid dairy products, 30-12-404.

Dairy licensing — discrimination prohibited, 49-3-204.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Part 1
Administration

81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for that other person in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(5) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

(6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(7) "Creamery" means a place where butter is made for commercial purposes.

(8) "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

(9) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(10) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(11) "Directly acidified" and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(12) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(13) "French ice cream", "French custard ice cream", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(14) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(15) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsections (21)(a)(iii) through (21)(a)(xii) are made.

(17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(18) "Manufactured dairy product" means an item enumerated in subsection (21) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited to:

(a) ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

(20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

(b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

(22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(23) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process

that has been recognized by the United States public health service to be equally effective and that is approved by the department.

(26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(27) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(29) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(30) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

History: Ap.p. Sec. 10, Ch. 413, L. 1971; amd. Sec. 17, Ch. 310, L. 1974; amd. Sec. 4, Ch. 12, L. 1977; Sec. 3-2497, R.C.M. 1947; Ap.p. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; re-en. Sec. 2620.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977; Sec. 3-2404, R.C.M. 1947; R.C.M. 1947, 3-2404(1) thru (17), 3-2497; amd. Sec. 12, Ch. 14, L. 1979; amd. Sec. 79, Ch. 10, L. 1993; amd. Sec. 291, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 deleted definition of cheese factory that read: ""Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes"; deleted definition of frozen dessert plant that read: ""Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) are made for commercial purposes"; deleted definition of fruit ice cream that read: ""Fruit ice cream" must conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat"; deleted definition of ice or ice sherbet that read: ""Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may not contain milk solids"; deleted definition of ice cream factory that read: "An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes"; deleted definition of milk sherbet that read: ""Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids"; deleted definition of raw milk or raw milk products that read: ""Raw milk" or "raw milk products" means milk or milk products that have not been treated by a process of pasteurization"; deleted definition of renovated butter or processed butter that read: ""Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat"; deleted definition of skimmed milk cheese that read: ""Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning"; in definition of directly acidified deleted reference to direct acidification as part of defined term; in definition of French ice cream deleted references to cooked ice cream, ice custard, and parfaits as part of defined term; in definition of ice cream mix, in (b), expanded reference to include subsection (a)(vi) of definition of milk; adjusted subsection references; and made minor changes in style. Amendment effective March 12, 1997.

81-22-102. General authority of department. (1) The department may regulate and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

(2) The department may adopt minimum standards for the production, transportation, grading, testing, use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of manufactured dairy products.

(3) The department shall adopt rules and establish fees for licenses for selling or producing milk as required by 81-23-202.

History: (1)En. Sec. 1, Ch. 413, L. 1971; amd. Sec. 9, Ch. 310, L. 1974; Sec. 3-2488, R.C.M. 1947; (2)En. 2, Ch. 413, L. 1971; amd. Sec. 10, Ch. 310, L. 1974; amd. Sec. 2, Ch. 12, L. 1977; Sec. 3-2489, R.C.M. 1947; R.C.M. 1947, 3-2488, 3-2489; amd. Sec. 25, Ch. 444, L. 1983.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-22-103. New or amended rules — mailing — hearing — judicial review. (1) Every new or amended rule proposed by the department under this chapter shall be mailed to each person licensed under this chapter who will be affected by the rule, at least 45 days before the date on which the rule becomes effective.

(2) On application in writing filed at least 15 days before the effective date of the proposal by a person licensed under this chapter, the department shall vacate the effective date of the proposed rule and hold a public hearing on and take evidence concerning it. Within 30 days after the conclusion of the hearing, the department shall make written findings and conclusions and a written decision based on the hearing, determining whether the rule shall be adopted. A new or amended rule adopted following the hearing and conclusion may not take effect until 90 days after the date of the decision.

(3) The district court of the first judicial district has jurisdiction to review, modify, or set aside a decision adopting a new or amended rule under this chapter on petition made to it at any time before the effective date of the rule by a person claiming to be adversely affected by the decision.

History: En. Sec. 8, Ch. 413, L. 1971; amd. Sec. 15, Ch. 310, L. 1974; R.C.M. 1947, 3-2495.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

81-22-104. Enforcement of laws and rules — violation as misdemeanor. (1) The department shall supervise and enforce the laws and rules which pertain to the standards of quality and sanitation of manufactured dairy products and of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and food additives used in manufacturing dairy products.

(2) Rules adopted under this chapter have the effect of law, and violation of these rules is a misdemeanor, punishable as provided in 81-22-601 unless a specific penalty has been provided.

History: En. Sec. 6, Ch. 413, L. 1971; amd. Sec. 14, Ch. 310, L. 1974; R.C.M. 1947, 3-2493.

81-22-105. Investigation of complaints and violations — injunction. The department shall provide for periodic inspections and investigations to disclose violations of this chapter or of rules adopted under this chapter. The department shall receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. This chapter and the rules adopted under it may be enforced by injunction in a court having jurisdiction to grant injunctive relief. An adulterated, impure, contaminated, misbranded, condemned, or mislabeled article or product involved in a violation of this chapter or of the rules adopted under this part is subject to seizure and disposition under an order of the court.

History: En. Sec. 9, Ch. 413, L. 1971; amd. Sec. 16, Ch. 310, L. 1974; amd. Sec. 3, Ch. 12, L. 1977; R.C.M. 1947, 3-2496.

Cross-References

Injunctions, Title 27, ch. 19.

Penalties for violation, 81-22-601.

81-22-106. Names and addresses of producers furnished on request. The operator of any manufactured dairy products plant or grade A milk plant shall, on request of the department, furnish the department with the names and addresses of all producers from whom the plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971; amd. Sec. 26, Ch. 310, L. 1974; R.C.M. 1947, 3-24-108.

81-22-107. Use of inspections, tests, samples, etc., as evidence. All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this chapter may be used as evidence in any court of jurisdiction, at hearings, or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971; R.C.M. 1947, 3-24-109.

81-22-108. Antimonopoly statutes applicable. The provisions of Title 30, chapter 14, part 2, relating to monopoly in the purchase or sale of products in general use are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture and those who shall violate any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 43, Ch. 413, L. 1971; R.C.M. 1947, 3-24-130.

Part 2
Licensing Provisions

81-22-201. License required to operate manufactured dairy products plant. (1) It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed, or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt, or frozen dessert manufacturing plant without first obtaining a license from the department.

(2) Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for relicensing purposes, provided that changes of ownership shall not be construed to include changes of stockholders.

History: En. Sec. 20, Ch. 413, L. 1971; R.C.M. 1947, 3-24-107.

81-22-202. Licensing of persons engaged in production of milk. (1) The department may license persons engaged in the production of milk for manufacturing purposes and license persons who manufacture dairy products or products made in their semblance or imitation when the products are made in a manufactured dairy products plant.

(2) The department may examine and license weighers, graders, samplers, and milk and cream testers in order to establish the qualifications of these persons to perform those operations or tests for which the licenses are issued.

History: En. Sec. 3, Ch. 413, L. 1971; amd. Sec. 11, Ch. 310, L. 1974; R.C.M. 1947, 3-2490.

81-22-203. Renewal, suspension, or revocation of license — grounds — hearing — appeal to district court. (1) The department may deny renewal of, suspend, or revoke a license issued under this part or its rules for cause or failure to comply with this chapter or with the rules, testing procedures, or methods adopted under this chapter or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or suspend the license and its reasons therefor. The department shall give the licensee a time limit of 10 days from receipt of the notice during which the licensee may request a hearing to show cause why his license should not be revoked, denied, or suspended. The notice shall be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as his desire not to contest the department's reasons for suspending, denying, or revoking the license.

(3) If the licensee does request a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing must be not less than 10 days or more than 30 days after receipt of the licensee's request for the hearing. A request for a hearing shall serve as a bar to prosecution until a decision from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the denial, suspension, or revocation of his license, and after hearing all the evidence, the department shall make a determination. If a license is suspended, denied, or revoked, it may not be

reinstated until examination or inspection by the department shows that the cause for suspension, denial, or revocation has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee is subject to the penalties provided in the chapter.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to suspension, denial, or revocation of a license may appeal, within 30 days after the date of determination by the department, to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state, of the county of its principal place of business.

(7) If a license is revoked a new license must be obtained from the department, but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971; amd. Sec. 25, Ch. 310, L. 1974; R.C.M. 1947, 3-24-106.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Department of Public Health and Human Services — licensing of food manufacturing establishments, Title 50, ch. 50, part 2.

81-22-204. License required for milk or cream route. It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route for a manufactured dairy products plant, milk plant, or milk or cream station without first procuring a license from the department. The department shall establish a fee for the license.

History: En. Sec. 13, Ch. 413, L. 1971; amd. Sec. 20, Ch. 310, L. 1974; R.C.M. 1947, 3-24-100; amd. Sec. 13, Ch. 14, L. 1979; amd. Sec. 26, Ch. 444, L. 1983.

81-22-205. Examination and licensing of persons engaged in testing. (1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination shall be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant shall be issued a license authorizing him to conduct these tests in this state. The department shall establish a fee to be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied where testing is not conducted under official test procedures or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this chapter. A person who alters the results of an official test is subject to the penalties provided in this chapter.

History: En. Sec. 15, Ch. 413, L. 1971; amd. Sec. 22, Ch. 310, L. 1974; R.C.M. 1947, 3-24-102; amd. Sec. 27, Ch. 444, L. 1983.

81-22-206. Licensing of graders, weighers, and samplers. It is unlawful for a person to grade, weigh, or sample milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing the examination required by the department.

History: **En. Sec. 18, Ch. 413, L. 1971; amd. Sec. 24, Ch. 310, L. 1974; R.C.M. 1947, 3-24-105(2).**

81-22-207. License — issuance and penalty. (1) All licenses issued under this part are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board.

(2) All licenses issued under this part are valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration on payment of the required fee.

(3) All licenses issued under this part shall be posted in conspicuous view at the place of business.

(4) Licenses issued under this part are not transferable from place to place or person to person.

(5) Penalties of $5 per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this part. Regulatory action may not be taken against a dairyman licensed under this part until 2 years following the adoption of rules under this chapter.

History: **En. Sec. 14, Ch. 413, L. 1971; amd. Sec. 21, Ch. 310, L. 1974; R.C.M. 1947, 3-24-101.**

81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) a manufactured dairy products plant. However, a plant license is not required of a food service establishment licensed by the department of public health and human services, as defined in 50-50-102, and a license is not required to manufacture nondairy products when only nondairy products are manufactured.

(b) a cream station. However, a license is not required if the cream station is owned and operated by a licensed plant, but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection.

(c) a dairy producing milk for manufacturing purposes. However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102.

(d) a grader-weigher-sampler, tester, and hauler. However, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued and expires on December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it must be accompanied by the correct license fee. A license must be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person to

person. A penalty fee in an amount established by a rule of the department may be imposed by it on a person who fails to apply for renewal of a license if under this part that person is required to be licensed.

(3) All license fees collected must be deposited in the general fund.

History: **En. Sec. 1, Ch. 451, L. 1973; R.C.M. 1947, 3-24-112.1; amd. Sec. 28, Ch. 444, L. 1983; amd. Sec. 352, Ch. 418, L. 1995; amd. Sec. 552, Ch. 546, L. 1995.**

81-22-209. License requirements applicable. The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of public health and human services.

History: **En. Sec. 42, Ch. 413, L. 1971; amd. Sec. 36, Ch. 310, L. 1974; R.C.M. 1947, 3-24-129; amd. Sec. 353, Ch. 418, L. 1995; amd. Sec. 553, Ch. 546, L. 1995.**

Cross-References

Department of Public Health and Human Services — licensing of food manufacturing establishments, Title 50, ch. 50, part 2.

Part 3
Inspection

81-22-301. Tests and analyses — admissibility as evidence. (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of public health or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) (a) The following tests or analyses may be used:

(i) an appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc., or in Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc.;

(ii) the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the association of official analytical chemists; or

(iii) any other appropriate tests approved by the department.

(b) The results of these tests or analyses are admissible as prima facie evidence of the facts disclosed in a court, hearing, or proceeding arising under this chapter when the tests or analyses are identified by the sample numbers and verified by the department representative and analyst handling them. These tests and analyses must be designated and referred to as "official tests".

History: **En. Sec. 11, Ch. 413, L. 1971; amd. Sec. 18, Ch. 310, L. 1974; amd. Sec. 5, Ch. 12, L. 1977; R.C.M. 1947, 3-2498; amd. Sec. 354, Ch. 418, L. 1995.**

Cross-References

Basis of opinion testimony by experts, Rule 703, M.R.Ev. (see Title 26, ch. 10).

Disclosure of facts or data underlying expert opinion, Rule 705, M.R.Ev. (see Title 26, ch. 10).

81-22-302. Taking and preservation of samples. (1) A person purchasing or sampling milk or cream for manufacture, sale, or shipment and paying for the milk or cream on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, when receiving the milk or cream, shall take a sample of the milk or cream.

(2) All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained. The record of purchase shall also show the weight of the milk or cream, the results of the analysis, the date of sampling, and the amount paid. All milk and cream samples on which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of 14 days following testing in the case of milk and for at least 2 days in the case of cream. These samples are subject to retest by the department.

(3) This section does not prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks or the use of composite or single samples of milk according to rules adopted by the department or the test procedures prescribed in this chapter.

History: En. Sec. 12, Ch. 413, L. 1971; amd. Sec. 19, Ch. 310, L. 1974; R.C.M. 1947, 3-2499.

81-22-303. Sampling and testing by department. The department shall have the authority to sample, test, and/or retest samples of milk or cream or their products at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

History: En. Sec. 16, Ch. 413, L. 1971; R.C.M. 1947, 3-24-103.

Cross-References

Testing of milk, 81-23-105.

81-22-304. Department's right of entry into dairy or plants for inspection — penalty. (1) The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, into a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

(2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than $50 and not more than $500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such fine and imprisonment.

History: En. Sec. 27, Ch. 413, L. 1971; amd. Sec. 30, Ch. 310, L. 1974; R.C.M. 1947, 3-24-114.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-22-305. Cooperative agreements with other agencies. (1) The department may enter into cooperative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate the performance of its functions or duties.

(2) This section permits the department to establish cooperative working agreements with health departments, sanitarians, or health officers when special investigations, sampling, or analyses are considered advisable.

History: En. Sec. 28, Ch. 413, L. 1971; amd. Sec. 31, Ch. 310, L. 1974; R.C.M. 1947, 3-24-115.

Part 4

Sanitation, Quality, and Labeling Requirements

81-22-401. Grading of milk — condemnation of unsafe milk. Milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers. It is unlawful to sell, purchase, or use milk or cream for a food purpose if the milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria. The milk or cream grader or the department shall condemn the milk or cream and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971; amd. Sec. 23, Ch. 310, L. 1974; R.C.M. 1947, 3-24-104.

81-22-402. Employment of grader, weigher, and sampler — revocation of operator's license. (1) Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler at each receiving station or for each route.

(2) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler or one whose license has been revoked or suspended is subject to revocation of his own license to operate a manufactured dairy products plant or cream or milk receiving station or to the penalties prescribed in this chapter.

History: En. Sec. 18, Ch. 413, L. 1971; amd. Sec. 24, Ch. 310, L. 1974; R.C.M. 1947, 3-24-105(1), (3).

Cross-References

Penalties for violation, Title 81, ch. 22, part 6.

81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant. (1) Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans must be submitted to the department for review and approval before construction, remodeling, or relocation begins. The plans must show:

(a) size of rooms;
(b) type of building material;
(c) lighting and electrical system;
(d) ventilation;
(e) location of water supply;
(f) sewage disposal;
(g) materials to be used in floors, walls, and ceilings;
(h) location and type of floor drains;

(i) plumbing, plumbing fixtures, equipment; and

(j) the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery.

(2) Replacement equipment must be of the NSF or 3A standard approved types unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area.

(3) Wastewater, sewage, and air pollutants must be disposed by means approved by the department of environmental quality, and evidence must be submitted that approval has been obtained from the department of environmental quality.

History: En. Sec. 23, Ch. 413, L. 1971; amd. Sec. 27, Ch. 310, L. 1974; R.C.M. 1947, 3-24-110; amd. Sec. 355, Ch. 418, L. 1995.

81-22-404. Removal or destruction of products in case of potential health hazards. (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product that is adulterated or that may be detrimental to the health or safety of the consumer, the department may request the department of public health and human services to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order that requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days, or both fine and imprisonment.

History: En. Sec. 26, Ch. 413, L. 1971; amd. Sec. 29, Ch. 310, L. 1974; R.C.M. 1947, 3-24-113; amd. Sec. 356, Ch. 418, L. 1995; amd. Sec. 554, Ch. 546, L. 1995.

81-22-405. Labeling of cheese containers. It shall be unlawful and punishable as a misdemeanor for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of cheese, and the manufacturer's or distributor's name and address or plant number.

History: En. Sec. 30, Ch. 413, L. 1971; R.C.M. 1947, 3-24-117(part).

Cross-References

Penalty for violation, 81-22-601.

81-22-406. Products to be kept at safe temperature. All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana shall be considered perishable and potentially hazardous and shall be kept at safe temperature or below; provided, however, that:

(1) nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening, or aging of certain cheeses and cultured products; and

(2) this section does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

History: **En. Sec. 30, Ch. 413, L. 1971; R.C.M. 1947, 3-24-117(part).**

81-22-407. Sanitary regulation of imported products. (1) All manufactured dairy products or imitations or products made in semblance thereof, covered by this chapter, shipped into Montana for sale, display, or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

(2) Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: **En. Sec. 31, Ch. 413, L. 1971; R.C.M. 1947, 3-24-118.**

81-22-408. Manufacturer's and wholesaler's or retailer's names to appear on package — use of codes and numbers permitted. (1) All manufactured dairy products sold, offered, displayed, or exposed for sale at wholesale or retail in this state, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold.

(2) If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped.

(3) This section does not prevent the use of codes or numbers which designate the packaging or wrapping plant if these codes or numbers are registered with the department.

History: **En. Sec. 32, Ch. 413, L. 1971; amd. Sec. 33, Ch. 310, L. 1974; R.C.M. 1947, 3-24-119; amd. Sec. 14, Ch. 14, L. 1979.**

81-22-409. Adulterating milk or cream unlawful. (1) It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes or for any manufactured dairy product to contain an adulterant. For purposes of this chapter, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations, except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this subsection shall be misdemeanors and shall be punishable by fine or imprisonment, or both, as provided in this chapter.

(2) It shall be unlawful for any person to sell, manufacture, exchange, display, or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: **(1)En. Sec. 37, Ch. 413, L. 1971; Sec. 3-24-124, R.C.M. 1947; (2)En. Sec. 33, Ch. 413, L. 1971; Sec. 3-24-120, R.C.M. 1947; R.C.M. 1947, 3-24-120, 3-24-124.**

81-22-410. Manufacture, sale, or importation of products containing extraneous fats. It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing nonapproved ingredients with the intent to sell the same as milk, cream, or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream, or manufactured dairy products.

History: **En. Sec. 34, Ch. 413, L. 1971; R.C.M. 1947, 3-24-121.**

81-22-411. Filled dairy products unlawful — exceptions. (1) Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud and if permitted, tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this chapter to:

(a) correct, prevent, and eliminate the condition above referred to;

(b) protect the public from confusion, fraud, and deception;

(c) prohibit practices inimical to the general welfare; and

(d) promote the orderly and fair marketing of essential foods.

(2) It is unlawful:

(a) for any person to manufacture, sell, exchange, display, purvey, transport, or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product in intrastate commerce;

(b) for any person owning or operating a bakery, confectionery shop, factory, or other place where food products are prepared or manufactured for sale, exchange, or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(c) for any person knowingly to sell, exchange, purvey, transport, or possess any food product in intrastate commerce in which any filled dairy product is an ingredient.

(3) The term "filled dairy product" does not mean or include:

(a) oleomargarine;

(b) any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(e) any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed 1/100 of 1% of the weight of the finished dairy product.

History: **En. Sec. 35, Ch. 413, L. 1971; amd. Sec. 6, Ch. 12, L. 1977; R.C.M. 1947, 3-24-122.**

81-22-412. Manufactured products to conform to standards of identity. It shall be unlawful for any person to manufacture, display, transport, sell, or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations or to the standard of identity established by the department.

History: **En. Sec. 36, Ch. 413, L. 1971; R.C.M. 1947, 3-24-123.**

81-22-413. Pasteurization required. All milk and cream used in the manufacture of any dairy product or products made in semblance or imitation of dairy products sold, offered for sale, purveyed, stored, displayed, or transported in Montana must be pasteurized. However, cheese held, stored, or aged for at least 60 days at not less than 35 degrees F is not required to be made from pasteurized milk or cream but must be labeled "made from raw or unpasteurized milk or unpasteurized cream", as the case may be. Other cultured raw or unpasteurized dairy products that can be made safe by aging must be similarly aged and labeled as required above.

History: **En. Sec. 39, Ch. 413, L. 1971; R.C.M. 1947, 3-24-126; amd. Sec. 15, Ch. 14, L. 1979.**

81-22-414. Pasteurization apparatus and records. (1) The department may adopt rules that it considers necessary to ensure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and apparatus that are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records must at all times be open to the inspection of the department, the department of public health and human services, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment that records temperatures or controls the time of holding must be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department.

History: **En. Sec. 40, Ch. 413, L. 1971; amd. Sec. 34, Ch. 310, L. 1974; amd. Sec. 7, Ch. 12, L. 1977; R.C.M. 1947, 3-24-127; amd. Sec. 357, Ch. 418, L. 1995; amd. Sec. 555, Ch. 546, L. 1995.**

81-22-415. Pasteurization labeling. It is unlawful for a person to sell, offer for sale, exchange, or to have in his possession for these purposes milk, cream, or a manufactured dairy product in a container or package marked, labeled, or in any way designating the contents of the container or package as "pasteurized", unless it has been treated by an approved process of pasteurization as required by the department.

History: **En. Sec. 41, Ch. 413, L. 1971; amd. Sec. 35, Ch. 310, L. 1974; R.C.M. 1947, 3-24-128.**

81-22-416. Milk and manufactured dairy products to conform to standards. All milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this chapter or in the regulations promulgated under the authority of this chapter.

History: **En. Sec. 44, Ch. 413, L. 1971; R.C.M. 1947, 3-24-131.**

81-22-417. Making or selling products in violation of chapter prohibited — penalty. It is unlawful for a person, firm, or corporation or its servant or agent to manufacture, sell, or expose or offer for sale or exchange butter or other substance or commodity defined in this chapter containing less butterfat or other ingredient than required by this chapter. A violator is guilty of a misdemeanor and is punishable under 81-22-601.

History: **En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; re-en. Sec. 2620.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977; R.C.M. 1947, 3-2404(18).**

81-22-418. Posting prices of butterfat required. All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat or other component content of milk or cream in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: **En. Sec. 45, Ch. 413, L. 1971; R.C.M. 1947, 3-24-132.**

81-22-419. Requirements for containers and equipment. All containers and equipment used in the manufacture, storage, holding display, and transportation of any manufactured dairy product shall be nontoxic, easily cleanable, and free from dents, cracks, crevices, rust, and any other condition which would prevent cleaning and sanitizing.

History: **En. Sec. 47, Ch. 413, L. 1971; R.C.M. 1947, 3-24-134.**

81-22-420. Labeling of animal or vegetable fat contents on frozen desserts. (1) Any frozen dessert made in the semblance of or in imitation of ice cream in this chapter, which contains any amount of animal fat (other than milk fat) or vegetable fat or oil (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this chapter and of the regulations promulgated under the authority of this chapter.

(2) No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner on any container, package, or wrapper or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet, or any of

their low-fat counterparts or derivatives or any other products which are prohibited from containing animal or vegetable fats.

(3) The container, package, or wrapper containing such animal fat or vegetable fat frozen dessert shall be clearly and plainly marked, labeled, or printed on the outside in boldfaced letters with the words, “animal fat product”, “vegetable fat product”, “animal-vegetable fat product”, or “vegetable-animal fat product”, as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils, except that spices, flavorings, or colorings may be designated as such without naming each.

History: En. Sec. 48, Ch. 413, L. 1971; R.C.M. 1947, 3-24-135.

81-22-421. Labeling on manufactured dairy products to conform to requirements. Labeling on manufactured dairy products must conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements that are adopted by the department or the department of public health and human services.

History: En. Sec. 49, Ch. 413, L. 1971; amd. Sec. 37, Ch. 310, L. 1974; R.C.M. 1947, 3-24-136; amd. Sec. 358, Ch. 418, L. 1995; amd. Sec. 556, Ch. 546, L. 1995.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Part 5
Records and Reports

81-22-501. Required records and reports — examination. The department may require dairies and dairy product manufacturers to maintain and produce for examination or to report the records necessary for carrying out its duties under this chapter.

History: En. Sec. 5, Ch. 413, L. 1971; amd. Sec. 13, Ch. 310, L. 1974; R.C.M. 1947, 3-2492.

81-22-502. Monthly report of plant operator — penalty. A person operating a manufactured dairy products plant in this state shall send to the department once a month, not later than the 10th day of the month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month, as requested by the department. Any person failing to render the report required by this section or failing to make the report by the date due is guilty of a misdemeanor and subject to the penalties provided in this chapter.

History: En. Sec. 24, Ch. 413, L. 1971; amd. Sec. 28, Ch. 310, L. 1974; R.C.M. 1947, 3-24-111.

Cross-References

Penalties for violation, Title 81, ch. 22, part 6.

81-22-503. Buyers and plants to make records available to department. (1) Persons, including cooperatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream shall make available to the department, on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

(2) A manufactured dairy product plant, on request by the department, shall make available production records of dairy manufactured products covered by this chapter and manufactured products made in semblance or imitation of these dairy products.

History: En. Sec. 29, Ch. 413, L. 1971; amd. Sec. 32, Ch. 310, L. 1974; R.C.M. 1947, 3-24-116.

Part 6
Penalties

81-22-601. Penalties for violations. (1) A person who violates this chapter, fails to comply with the rules adopted under this chapter, or fails or neglects to obey a lawful order of the department made under this chapter, is guilty of a misdemeanor.

(2) Unless a specific penalty is provided in this chapter or rules for the offense, the offender shall be fined not less than $25 and not more than $500 or imprisoned in the county jail for not to exceed 6 months or both fined and imprisoned.

History: En. Sec. 50, Ch. 413, L. 1971; amd. Sec. 38, Ch. 310, L. 1974; R.C.M. 1947, 3-24-137.

81-22-602. Deceit in grade, measure, or test of milk and cream unlawful. (1) No person may use a measure or grading or testing apparatus which does not comply with the standards of the department or make any false or inaccurate statement or otherwise deceive or defraud a producer or other person concerning the weight, measure, butterfat content, or other component content of milk or cream.

(2) A person, firm, or corporation who violates this section is guilty of a misdemeanor and shall be fined not more than $300 or imprisoned in the county jail for not more than 2 months or both fined and imprisoned. The department may revoke a license issued to a person, firm, or corporation upon conviction for violation of this section.

History: (1)En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933; re-en. Sec. 3572.1, R.C.M. 1935; Sec. 3-113, R.C.M. 1947; amd. and redes. 3-24-138 by Sec. 3, Ch. 218, L. 1974; amd. Sec. 8, Ch. 12, L. 1977; Sec. 3-24-138, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933; re-en. Sec. 3572.2, R.C.M. 1935; Sec. 3-114, R.C.M. 1947; amd. and redes. 3-24-139 by Sec. 4, Ch. 218, L. 1974; Sec. 3-24-139; R.C.M. 1947; R.C.M. 1947, 3-24-138, 3-24-139.

CHAPTER 23
MILK PRICE CONTROL

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Part 1
General Administration

81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

(h) "Licensee" means a person who holds a license from the department.

(i) "Market" means an area of the state designated by the department as a natural marketing area.

(j) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(k) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(l) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(m) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(n) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(o) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971; amd. Sec. 89, Ch. 431, L. 1975; R.C.M. 1947, 27-403; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 56, L. 1993; amd. Sec. 1, Ch. 242, L. 1995; amd. Sec. 2, Ch. 333, L. 1995; amd. Sec. 557, Ch. 546, L. 1995.

81-23-102. Policy. (1) It is hereby declared that:

(a) milk is a necessary article of food for human consumption;

(b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;

(d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk and products manufactured from milk, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;

(e) health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream and products manufactured from milk and cream, to eliminate speculation and waste, and to make the distribution of milk and cream and products manufactured from milk and cream between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of those commodities;

(g) investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) milk is a perishable commodity that is easily contaminated with harmful bacteria, that cannot be stored for any great length of time, that must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and ensure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into byproducts of milk at great expense and often at a loss to the producer and distributor;

(j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and often to produce milk of an inferior and unsanitary quality;

(k) investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers are guaranteed and ensured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

(l) where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

(m) due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

History: **(1)En. Sec. 1, Ch. 204, L. 1939; amd. Sec. 1, Ch. 4, L. 1967; Sec. 27-401, R.C.M. 1947; (2)En. Sec. 2, Ch. 204, L. 1939; amd. Sec. 2, Ch. 4, L. 1967; amd. Sec. 88, Ch. 431, L. 1975; Sec. 27-402, R.C.M. 1947; R.C.M. 1947, 27-401, 27-402; amd. Sec. 2, Ch. 242, L. 1995.**

81-23-103. General powers of department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. This chapter does not affect the status, force, or operation of any provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and shall conduct hearings on any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

History: **En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959; amd. Sec. 4, Ch. 4, L. 1967; amd. Sec. 1, Ch. 267, L. 1975; amd. Sec. 90, Ch. 431, L. 1975; amd. Sec. 1, Ch. 19, L. 1977; R.C.M. 1947, 27-405; amd. Sec. 3, Ch. 333, L. 1995; amd. Sec. 359, Ch. 418, L. 1995; amd. Sec. 558, Ch. 546, L. 1995.**

Cross-References

Montana Administrative Procedure Act — contested case procedure, Title 2, ch. 4, part 6.

Creation of Department of Livestock, 2-15-3101.

Municipal regulation of foodstuffs, 7-21-4202.

81-23-104. Rules and orders. The department may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the department or the board. A rule or order shall be posted for public inspection in the main office of the department for 30 days, and a copy shall be filed in the office of the department. A copy shall also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which shall be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law.

History: En. Sec. 13, Ch. 204, L. 1939; amd. Sec. 97, Ch. 431, L. 1975; R.C.M. 1947, 27-413.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-23-105. Testing of milk. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants that receive raw milk directly from producers, the department may establish a program of testing raw milk.

(2) The department may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program must be licensed by the animal health division of the department.

(4) The department may conduct all types of sampling, grading, and testing techniques that the department considers necessary to carry out the intent of this section.

History: En. 27-430 by Sec. 1, Ch. 245, L. 1977; R.C.M. 1947, 27-430; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 316, L. 1985; amd. Sec. 4, Ch. 333, L. 1995.

Cross-References

Sampling and testing by Department, 81-22-303.

81-23-106. Application. This chapter does not apply to foreign or interstate commerce except insofar as it may be effective in compliance with the United States constitution and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling within the state by a dealer of milk produced outside of the state becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately apply and the powers conferred by this chapter attach thereto.

History: En. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; R.C.M. 1947, 27-423(2).

Part 2
Licensing

Part Cross-References

Montana Administrative Procedure Act — contested case procedure, Title 2, ch. 4, part 6.

Licensing of milk plants and dairies selling milk or cream for public consumption, 81-21-102.

81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers. In any market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The department may decline to grant a license or may suspend or revoke a license already granted, upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971; amd. Sec. 93, Ch. 431, L. 1975; R.C.M. 1947, 27-408.

81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department, as provided in 81-22-202, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is $2 and is due before July 1 and must be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The board shall include this fee in its formulas for fixing by rule the minimum producer prices for class I milk in 81-23-302.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment that was due.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year.

History: Ap. p. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974; amd. Sec. 94, Ch. 431, L. 1975; Sec. 27-409, R.C.M. 1947; Ap. p. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; Sec. 27-423, R.C.M. 1947; R.C.M. 1947, 27-409, 27-423(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 566, L. 1993; amd. Sec. 3, Ch. 242, L. 1995; amd. Sec. 5, Ch. 333, L. 1995.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

81-23-203. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared by the department and containing the information required by the department. The application must certify the applicant to be the holder of all licenses required by the department for the conduct of the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application must be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971; amd. Sec. 95, Ch. 431, L. 1975; R.C.M. 1947, 27-410; amd. Sec. 6, Ch. 333, L. 1995.

Cross-References

Small business licensing coordination, Title 30, ch. 16.

81-23-204. Declining, suspending, and revoking licenses — penalties in lieu of suspension or revocation. (1) The department may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department may suspend or revoke a license.

(2) In place of suspension or revocation of a license, the department may assess a civil penalty not to exceed $500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the department or board. If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty shall be construed as civil and not criminal in nature. Any moneys received by the department as a result of collection of

civil penalties shall be paid into the state special revenue fund as provided by 81-23-403.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971; amd. Sec. 96, Ch. 431, L. 1975; R.C.M. 1947, 27-411; amd. Sec. 3, Ch. 23, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Montana Administrative Procedure Act — contested case procedure, Title 2, ch. 4, part 6.

81-23-205. Repealed. Sec. 7, Ch. 23, L. 1983.

History: En. Sec. 10, Ch. 192, L. 1959; amd. Sec. 7, Ch. 4, L. 1967; amd. Sec. 108, Ch. 431, L. 1975; R.C.M. 1947, 27-426.

Part 3

Regulation of Milk Prices

81-23-301. Repealed. Sec. 7, Ch. 23, L. 1983.

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, Ch. 107, L. 1971; amd. Sec. 91, Ch. 431, L. 1975; R.C.M. 1947, 27-406.

81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer prices for class I, class II, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish prices by means of flexible formulas that must be devised so that they bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider, so that all interested parties will have opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk in classes I, II, and III must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state, provided that milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend an official rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented

at the hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the arrangement. An official order is not effective until it is approved in a referendum conducted by the board by mail and by secret ballot among affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum. The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be enforced and audited for compliance by the department.

History: En. Sec. 7, Ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974; amd. Sec. 92, Ch. 431, L. 1975; amd. Sec. 2, Ch. 19, L. 1977; R.C.M. 1947, 27-407; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 4, Ch. 23, L. 1983; amd. Sec. 1, Ch. 274, L. 1987; amd. Sec. 4, Ch. 242, L. 1995; amd. Sec. 7, Ch. 333, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Creation of Board of Milk Control, 2-15-3105.

81-23-303. Rules of fair trade practices. The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302(10), fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government.

History: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959; amd. Sec. 98, Ch. 431, L. 1975; R.C.M. 1947, 27-414; amd. Sec. 5, Ch. 23, L. 1983; amd. Sec. 5, Ch. 242, L. 1995.

81-23-304. Limitation on extension of credit to retailers. A sale or delivery may not be made by a producer-distributor, distributor, or jobber to a retailer, except for cash or payment within 15 days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. A producer-distributor, distributor, or jobber may not extend more than 15 days' credit after billing to a retailer. A retailer may not receive delivery of milk without agreement to pay for it in cash within 15 days after regular billing. A correctly dated check which is honored upon presentment is cash within the meaning of this section. An extension or acceptance of credit in violation of this section shall be construed as rendering or receiving financial assistance. The licenses of producer-distributors, distributors, or jobbers involved in violation of this section shall be suspended or revoked as determined by the department after a hearing pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 8, Ch. 107, L. 1971; amd. Sec. 99, Ch. 431, L. 1975; R.C.M. 1947, 27-414.1; amd. Sec. 6, Ch. 23, L. 1983.

81-23-305. Financing prohibitions — producer and retailer. (1) A producer, producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a retailer. A producer, producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a producer. A producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. This section does not prohibit a producer from belonging to, participating in, or patronizing a cooperative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

(2) This section does not prohibit a producer from requesting and a distributor from granting an advance payment for milk before the regular date of payment for milk or limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

History: En. Sec. 9, Ch. 107, L. 1971; amd. Sec. 100, Ch. 431, L. 1975; R.C.M. 1947, 27-414.2.

Part 4
Enforcement

81-23-401. Entry, inspection, and investigation. The department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.

History: En. Sec. 15, Ch. 204, L. 1939; amd. Sec. 6, Ch. 4, L. 1967; amd. Sec. 101, Ch. 431, L. 1975; R.C.M. 1947, 27-415.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-23-402. Reports of dealers — accounting system — records. (1) The department may require licensees to file with it reports at reasonable or regular times which the department may require, showing the licensee's production, sale, or distribution of milk and any information considered by the department necessary which pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the department may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the department.

(2) The department shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;

(b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) a record of the wastage or loss of milk or dairy products;

(e) a record of the items of handling expense;

(f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;

(g) other records which the department considers necessary for the proper enforcement of this chapter.

History: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959; amd. Sec. 102, Ch. 431, L. 1975; R.C.M. 1947, 27-416.

81-23-403. Disposition of fines. (1) All fines assessed by a court other than a justice's court for violation of this chapter shall be paid by the court to the department.

(2) All fines received by the department shall be deposited with the state treasurer and shall be placed by him in the state special revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter.

History: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963; amd. Sec. 103, Ch. 431, L. 1975; R.C.M. 1947, 27-417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 58, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-23-404. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the department shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the department may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under this chapter.

History: En. Sec. 21, Ch. 204, L. 1939; amd. Sec. 104, Ch. 431, L. 1975; R.C.M. 1947, 27-421.

81-23-405. Violations made misdemeanors — penalties. (1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the department as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding $600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, shall be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter.

History: **En. Sec. 22, Ch. 204, L. 1939; amd. Sec. 105, Ch. 431, L. 1975; R.C.M. 1947, 27-422.**

81-23-406. Additional remedies. The department may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of livestock, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in court.

History: **En. Sec. 24, Ch. 204, L. 1939; amd. Sec. 107, Ch. 431, L. 1975; R.C.M. 1947, 27-424; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 8, Ch. 333, L. 1995.**

Cross-References

Injunctions, Title 27, ch. 19.

Mandamus, Title 27, ch. 26.

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

PROTECTION OF FARM ANIMALS AND RESEARCH FACILITIES

Part 1 — Farm Animal and Research Facility Protection Act

81-30-101. Short title.
81-30-102. Definitions.
81-30-103. Unlawful acts.
81-30-104. Action for damage.
81-30-105. Penalty.

Part 1

Farm Animal and Research Facility Protection Act

81-30-101. Short title. This chapter may be cited as the "Farm Animal and Research Facilities Protection Act".

History: **En. Sec. 1, Ch. 205, L. 1991.**

81-30-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Animal" means any warmblooded or coldblooded animal lawfully confined for food, fur, or fiber production, agriculture and its related activities, research, testing, or education. The term includes but is not limited to dogs, cats, poultry, fish, and invertebrates.

(2) "Animal facility" includes a vehicle, building, structure, research facility, or premises where an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale.

(3) "Consent" means agreement in fact, whether express or apparent.

(4) "Deprive" means to:

(a) withhold an animal or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(b) restore the animal or other property only upon payment of reward or other compensation; or

(c) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(5) "Effective consent" means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:

(a) induced by force or threat;

(b) given by a person that the offender knows is not legally authorized to act for the owner; or

(c) given by a person who by reason of youth, mental disease or defect, or being under the influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

(6) "Notice" means:

(a) oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.

(7) "Owner" means a person who has:

(a) title to the property; or

(b) lawful possession of the property.

(8) "Person" means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership; two or more persons having a joint or common interest; or some other legal entity.

(9) "Possession" means actual care, custody, control, or management.

(10) "Research facility" means a place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a living animal is lawfully carried out, conducted, or attempted.

History: En. Sec. 2, Ch. 205, L. 1991.

81-30-103. Unlawful acts. (1) A person who does not have the effective consent of the owner may not acquire or otherwise exercise control over an animal facility, an animal from an animal facility, or other property from an animal facility with the intent to deprive the owner of the facility, animal, or property or to damage the enterprise conducted at the animal facility.

(2) A person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not:

(a) damage or destroy an animal facility or an animal or property in or on the premises of an animal facility;

(b) enter an animal facility that is at the time closed to the public with the intent to commit an act prohibited by this chapter;

(c) remain concealed in an animal facility with the intent to commit an act prohibited by this chapter;

(d) enter an animal facility and commit or attempt to commit an act prohibited by this chapter;

(e) enter an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal defamation; or

(f) enter or remain on the premises of an animal facility if the person:

(i) had notice that the entry was forbidden; or

(ii) received notice to depart but failed to do so.

(3) The provisions of this chapter do not apply to lawful activities of a:

(a) government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party; and

(b) humane animal treatment shelter or its employees whose primary purpose is the bona fide control or humane care of animals or the enforcement of 45-8-211.

History: En. Sec. 3, Ch. 205, L. 1991.

81-30-104. Action for damage. (1) A person who has been damaged by reason of a violation of 81-30-103 may bring against the person who caused the damage an action in the district court to recover:

(a) an amount equal to three times all actual and consequential damages; and

(b) court costs and reasonable attorney fees.

(2) This chapter may not be construed to affect any other rights of a person who has been damaged by reason of a violation of this chapter. The provisions of subsection (1) may not be construed to limit the exercise of any rights arising out of or relating to a violation of 81-30-103.

History: En. Sec. 4, Ch. 205, L. 1991.

81-30-105. Penalty. (1) A person convicted of violating 81-30-103(2)(f) shall be fined not less than $50 or more than $500 or be imprisoned in the county jail for a term not to exceed 3 months, or both.

(2) A person convicted of an act that violates 81-30-103(1) and (2)(a) through (2)(e) and that results in $500 or less in damage or destruction shall be fined not more than $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of an act that violates 81-30-103(1) and (2)(a) through (2)(e) and that results in more than $500 in damage or destruction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 5, Ch. 205, L. 1991.

TITLE 82

MINERALS, OIL, AND GAS

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2. Mining Generally.
3. Coal Mining. Repealed.
4. Reclamation.
Chapters 5 through 9 reserved.
10. Oil and Gas — General Provisions.
11. Oil and Gas Conservation.
Chapters 12 through 14 reserved.
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CHAPTER 1

GENERAL PROVISIONS

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Chapter Cross-References

The Montana Resource Indemnity Trust and Ground Water Assessment Act, Title 15, ch. 38.

Service of process upon foreign corporation, 35-1-1034.

Part 1
Geophysical Exploration

Part Cross-References

Reckless or malicious use of explosives, 45-8-333.

Action in response to complaints related to use of explosives, 82-4-356.

Surface owner damage and disruption compensation, Title 82, ch. 10, part 5.

82-1-101. Persons required to comply. (1) A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of seismic exploration in which exploration entry is made upon the surface estate for the acquisition of geophysical data for any purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of others operates seismograph crews, as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

(2) The board of oil and gas conservation shall adopt rules:

(a) requiring adequate identification of seismic exploration crews operating in this state;

(b) designating areas where seismic exploration and activities may not be allowed; and

(c) regulating the plugging and abandonment of seismic shot holes.

History: En. Sec. 1, Ch. 235, L. 1955; R.C.M. 1947, 69-3301; amd. Sec. 1, Ch. 116, L. 1983; amd. Sec. 1, Ch. 339, L. 1985; amd. Sec. 1, Ch. 190, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative rules governing use of explosives — Department of Justice, 50-3-102.

Notice of intention to drill or conduct seismic operations to be filed with Board of Oil and Gas Conservation, 82-11-122.

82-1-102. Doing business within state — resident agent. A person, firm, or corporation shall be deemed to be doing business within the state of Montana when engaged in such geophysical exploration within the boundaries of this state and shall, if not already qualified to do business within this state with a designation of an agent within the state for service of process prior to such time, file with the secretary of state of the state of Montana an authorization, which authorization shall designate a resident agent for the service of process in any action which may be pending in a court in this state, which cause of action may have arisen out of such geophysical exploration.

History: En. Sec. 2, Ch. 235, L. 1955; R.C.M. 1947, 69-3302.

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Service of process upon corporations, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20); 35-1-1034.

Registration of foreign corporations, Title 35, ch. 1, part 10.

82-1-103. Notice of intention to explore. A person, firm, or corporation desiring to engage in geophysical exploration within the state of Montana shall file a notice of intention to engage in the exploration with the county clerk and recorder in each county in which exploration is to be carried on or engaged in. The notice shall be filed prior to the actual commencement of the exploration.

History: En. Sec. 3, Ch. 235, L. 1955; amd. Sec. 34, Ch. 39, L. 1977; R.C.M. 1947, 69-3303.

Cross-References

Fees for recording by County Clerk, 7-4-2631.

Notice of drilling operations, 82-10-503.

Notice of intention to drill or conduct seismic operations to be filed with Board of Oil and Gas Conservation, 82-11-122.

82-1-104. Surety bond — restoration of surface. (1) Prior to performing such seismic activity, a person, firm, or corporation shall also file with the secretary of state a good and sufficient surety bond in the amount of $10,000 for a single such seismic crew or a blanket surety bond in the amount of $25,000 for all such seismic crews operating within the state for such person, firm, or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such seismic exploration. Partial or complete forfeiture of the bond must be determined by the appropriate court of civil jurisdiction.

(2) Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" in such a manner as shall be specified by the board of oil and gas conservation to contain any water within its native strata by filling the hole with bentonite mud, cement, or other material approved by the board of oil and gas conservation as required to contain the water and capping the same in a manner and with a material specified by the board, the top of which cap shall be of sufficient depth below the surface of the land to allow cultivation. The portion of the hole above the cap shall be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation shall remove all stakes, markers, cables, ropes, wires, and debris or other material used in such exploration and shall also restore the surface around any shot holes as near as practicable to its original condition.

(4) The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm, or corporation.

History: En. Sec. 4, Ch. 235, L. 1955; amd. Sec. 1, Ch. 175, L. 1961; amd. Sec. 1, Ch. 272, L. 1977; R.C.M. 1947, 69-3304; amd. Sec. 2, Ch. 116, L. 1983; amd. Sec. 2, Ch. 339, L. 1985.

Cross-References

Accrual of cause of action for waste, trespass, or injury committed during exploration, 27-2-303.

Suretyship, Title 28, ch. 11, part 4.

Enforcement by County Attorney, 82-1-109.

Inventory of abandoned shot holes, 82-10-402.

Waste of oil and gas prohibited, 82-11-121.

Restrictions on oil and gas operations by Board of Oil and Gas Conservation, 82-11-123.

Requirements relating to waste preservation, 82-11-124.

82-1-105. Exploration permit. (1) Upon compliance with the provisions herein contained, namely the filing of a notice of intention to engage in the exploration and a certificate (or photostatic copy thereof) from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the person, firm, or corporation a "geophysical exploration permit".

(2) The permit shall show:

(a) the name of the person, firm, or corporation and principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for the person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been duly filed; and

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit shall be signed by the county clerk and recorder or his deputy and bear the official county seal. The permit shall be valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit shall be $5 per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing the permits, which shall be printed at the county seat, and excesses shall go into the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, typewritten or other form of reproduction of the permit may be used, the fee of $5 nevertheless shall be paid for its issuance, and this fee shall be disposed of in the same manner.

(6) The permit or a photostatic copy thereof shall be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and shall be exhibited upon demand of any county or state official.

History: En. Sec. 5, Ch. 235, L. 1955; amd. Sec. 35, Ch. 39, L. 1977; R.C.M. 1947, 69-3305.

Cross-References

Inventory of abandoned shot holes — approval of drilling permits, 82-10-402.

82-1-106. County clerk to notify board of issuance of permit — compliance. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this part, the board shall take necessary action to assure compliance.

History: En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(1) thru (3).

Cross-References

Board of Oil and Gas Conservation — composition — allocation — quasi-judicial, 2-15-3303.

Notice of intention to drill or conduct seismic operations to be filed with Board of Oil and Gas Conservation, 82-11-122.

82-1-107. Permitholder to furnish information to surface user. (1) Before commencing seismic activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity, and upon request the following information shall also be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) name and address of the company insuring the seismic firm or, if self-insured, evidence of such self-insurance;

(d) the number of the bond required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place;

(f) anticipated need, if any, to obtain water from the surface user during planned seismic activity.

(2) The surface user is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained.

History: En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(4); amd. Sec. 3, Ch. 339, L. 1985.

82-1-108. Filing record of work performed. (1) Within 3 months from the day any firing of shotpoints in seismic exploration is done by any person, firm, or corporation within this state, such person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) Such person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to his property has resulted from the use of the seismograph and explosives in seismic operations at some location within the maximum 4-square mile area, and the request shall designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder shall be supplied within 30 days from the date on which the request is received.

History: En. Sec. 6, Ch. 235, L. 1955; R.C.M. 1947, 69-3306; amd. Sec. 1, Ch. 201, L. 1979; amd. Sec. 4, Ch. 339, L. 1985.

82-1-109. Enforcement by county attorneys. It shall be the duty of the several county attorneys to see that the provisions herein contained are complied with and that this law is enforced.

History: **En. Sec. 7, Ch. 235, L. 1955; R.C.M. 1947, 69-3307.**

82-1-110. Penalty. A failure to comply with the terms of this part shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both. The geophysical permit of any person, firm, or corporation convicted of a violation of the plugging requirements of this part shall be revoked and may not be renewed for a period of 2 years after conviction.

History: **En. Sec. 8, Ch. 235, L. 1955; amd. Sec. 3, Ch. 272, L. 1977; R.C.M. 1947, 69-3308.**

Cross-References

Definition of misdemeanor, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

82-1-111. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Coal" means a combustible carbonaceous rock formed from the compaction and induration of variously altered plant remains. Coal does not include:

(a) methane gas or any other natural gas that may be found in any coal formation;

(b) oil shale; or

(c) gilsonite.

(2) "Gas" means all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation, as produced at the wellhead and not defined as oil in subsection (3).

(3) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form by ordinary production methods and that are not the result of condensation of gas before or after it leaves the reservoir.

History: **En. Sec. 1, Ch. 379, L. 1993.**

Part 2

Cancellation and Forfeiture of Oil, Gas, or Mineral Leases

Part Cross-References

Landlord and tenant, Title 70, ch. 26.

82-1-201. Release of record upon forfeiture, cancellation, or expiration of lease — penalty. (1) When an executed and recorded oil, gas, or other mineral lease is forfeited, canceled, or expires, it is the duty of the lessee, the lessee's successor, or assigns, within 60 days from the date of the forfeiture, cancellation, or expiration of the lease, to have the lease or abstract of the lease released from record in the county where the leased land is situated without cost to the lessor.

(2) A lessee may request the recordation of an assignment or release of more than one lease in a single instrument, and an instrument involving more than one lease made under this subsection must be treated for public recording purposes as a single request from the lessee.

(3) A lessee who fails to comply with subsection (1) within 30 days of written notice from the lessor is guilty of a misdemeanor punishable by a fine of up to $250.

History: En. Sec. 1, Ch. 22, L. 1917; re-en. Sec. 6902, R.C.M. 1921; re-en. Sec. 6902, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1971; R.C.M. 1947, 73-114; amd. Sec. 1, Ch. 365, L. 1985; amd. Sec. 1, Ch. 228, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 228 inserted (2) regarding request for recordation of assignment or release of more than one lease; and made minor changes in style.

Cross-References

Misdemeanor defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

82-1-202. Action to compel release — procedure without court action. (1) If the lessee or assignee thereof neglects or refuses to execute a release as provided by this part, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in such action he also may recover from the lessee, his successor, or assigns the sum of $100 as damages, all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the lessee or assignee of the lease. Issues in regard to attorney's fees shall be determined in the same manner as other issues in such actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee thereof, which notice shall state:

(a) the names of the lessor, lessee, and assignee thereof if assigned;

(b) the date of the lease and the date of the expiration thereof;

(c) the description of the lands leased;

(d) the place, book, and page where the lease is recorded; and

(e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease shall be terminated and of no effect and shall cease to be a lien upon the lands described therein, unless the lessee or the assignee thereof, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of such lease is recorded, an affidavit stating that the lease is in effect and delivers a copy thereof to the owner of the leased lands.

(3) If the lessee or the assignee thereof resides in the county where the lease or abstract of the lease is recorded, the notice shall be personally served on that person. If the lessee or the assignee thereof does not reside in that county but his address appears on the records in that county clerk's office or is otherwise known, the notice shall be mailed by certified mail to that person at that address, and in addition thereto the notice shall be published once a

week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of the lessee or assignee is unknown, the notice shall be published in the manner provided above. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit shall be kept as a permanent file in his office, and this proof of notice when so filed is prima facie evidence of the sufficiency of the notice, and from the filing thereof the lease is terminated and the lands released from the lien thereof.

History: En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1929; re-en. Sec. 6903, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1947; amd. Sec. 6, Ch. 218, L. 1971; amd. Sec. 36, Ch. 39, L. 1977; R.C.M. 1947, 73-115.

Cross-References

Original jurisdiction of District Courts, 3-5-302.

Prejudgment writs of attachment, Title 27, ch. 18.

Quieting title to real property generally, Title 70, ch. 28, part 1.

82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that said lease or abstract of such lease be released of record. Such demand must be written. When written, a copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

History: En. Sec. 3, Ch. 22, L. 1917; re-en. Sec. 6904, R.C.M. 1921; re-en. Sec. 6904, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1971; R.C.M. 1947, 73-116; amd. Sec. 189, Ch. 575, L. 1981.

82-1-204. Joinder of plaintiffs in actions concerning oil and gas leases. (1) In an action for the cancellation of an oil and/or gas lease or leases or quieting title against the claims thereunder, two or more plaintiffs may join in a single action against a common lessee and any one claiming by, through, or under such lessee as an assignee or otherwise. In the complaint in such action the cause or causes of action of each plaintiff shall be set forth separately and there shall be designated the lease or leases or claims or interests sought to be canceled or quieted. It shall be no defense to such an action that the lands of the plaintiffs are noncontiguous or that there is a lack of mutuality of interest between the plaintiffs in the subject of the action or in the relief sought, and the decree in such action shall specify the lease, leases, claims, or interests canceled or quieted.

(2) This procedure shall be in addition to and not in substitution of any existing remedies now allowed by law.

History: En. Secs. 1, 2, Ch. 135, L. 1939; R.C.M. 1947, 93-2813, 93-2814.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Permissive joinder of parties, Rule 20, M.R.Civ.P. (see Title 25, ch. 20).

Quieting title to property generally, Title 70, ch. 28, part 1.

Part 3
Trusts for Unlocatable Mineral Owners

Part Cross-References

Trust Code, Title 72, ch. 33 through 36.

82-1-301. Definition. The word "person", as used in this part, shall mean any individual, corporation, partnership, joint venture, trust or other entity capable of owning real property in Montana.

History: En. Sec. 6, Ch. 513, L. 1979.

82-1-302. Creation of trust for unlocatable mineral, leasehold, or royalty interest owners. (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of other persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner shall show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of an interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court or, if the clerk of court declines to act as trustee, the department of revenue as trustee and shall authorize the clerk of court or the department to execute and deliver an oil, gas, or other mineral lease, a ratification, a division order, or any other related document or instrument on the terms and conditions as the court may approve.

(4) If at any time a clerk of court decides to not continue as trustee for a trust for unlocatable mineral, leasehold, or royalty interest owners, the district court shall appoint the department of revenue to act as trustee. Upon the department of revenue's appointment as trustee, the clerk of court shall remit all funds and interest held in the trust to the department of revenue.

History: En. Sec. 1, Ch. 513, L. 1979; amd. Sec. 1, Ch. 126, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 126 in (3), after first "clerk of court", inserted "or, if the clerk of court declines to act as trustee, the department of revenue" and substituted "authorize the clerk of court or the department" for "authorize him"; inserted (4) relating to appointment of Department of Revenue as trustee; and made minor changes in style.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

82-1-303. No further liability for petitioner. If a trust in favor of unlocatable owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the unlocatable owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

History: En. Sec. 2, Ch. 513, L. 1979; amd. Sec. 190, Ch. 575, L. 1981.

Cross-References

Liability of trustees to beneficiaries, Title 72, ch. 34, part 5.

82-1-304. Administration of trust. (1) The administration of the trust must comply with the appropriate provisions regulating trusts contained in Title 72.

(2) Trustee or attorney fees may not be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income must be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to the money upon the order of the district court.

(4) A trust in favor of unlocatable owners must be kept in force until the unlocatable owners of the mineral interest in question have successfully claimed their share of the funds held in trust and have filed the notice, as provided in 82-1-306.

(5) The trustee shall invest funds in a prudent manner, as provided in 72-34-114. Fifty percent of the interest earned on each trust must be credited to the department of revenue or, if the clerk of the court is the trustee, to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

History: En. Sec. 3, Ch. 513, L. 1979; amd. Sec. 219, Ch. 685, L. 1989; amd. Sec. 2, Ch. 126, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 126 in (4) substituted "must be kept in force" for "shall be in force"; in (5), in first sentence, substituted "invest funds in a prudent manner" for "invest funds under his management in the manner of a prudent man" and in second sentence, after "credited", inserted "to the department of revenue or, if the clerk of the court is the trustee"; and made minor changes in style.

82-1-305. Trust for unlocatable mineral, leasehold, and royalty interest owners — penalty. (1) A person may not personally hold for longer than 6 months any bonuses, rental payments, royalties, or other income for unlocatable owners or claimants of an interest in minerals underlying a tract of land. Within the 6-month period, the person shall petition the district court for creation of a trust, as provided in 82-1-302.

(2) A person failing to comply with subsection (1) is liable for all attorney fees and court costs and interest on funds subject to subsection (1) at twice the current average passbook account rate paid by financial institutions in any district in which the property or part of the property is located.

History: En. Sec. 4, Ch. 513, L. 1979; amd. Sec. 3, Ch. 126, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 126 deleted former (1) that read: "(1) Any bonuses, rental payments, royalties, and other income now held by any person or association for unlocatable owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the tract is located within 6 months after July 1, 1979. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds"; in (1), after "owners or claimants of", substituted "an interest in minerals underlying a tract of land. Within the 6-month period, the person shall petition" for "an interest in minerals, but in such case must petition"; in (2), after "subsection (1)", deleted "or (2)", substituted "on funds subject to subsection (1)" for "on such funds", and after "financial institutions" substituted "in any district in which the property or part of the property is located" for "in that district"; and made minor changes in style.

82-1-306. Filing of addresses. (1) Upon the payment of a $5 fee, a person claiming an interest in minerals underlying a tract of land that is the subject of a trust proceeding under 82-1-302 may file with the clerk and recorder of each county in which the land is located a notice containing the person's address and a description of the person's interest in the minerals. Filing the notice creates a rebuttable presumption that the person owns the interest claimed.

(2) The clerk and recorder shall forward a copy of the notice to the trustee of the trust.

History: En. Sec. 5, Ch. 513, L. 1979; amd. Sec. 4, Ch. 126, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 126 in (1), after "county", substituted "in which the land is located a notice containing the person's address and a description of the person's interest in the minerals. Filing the notice creates a rebuttable presumption" for "wherein the mineral interests lie a notice of his address and the legal description of his interest and thereby establish a rebuttable presumption"; inserted (2) requiring Clerk and Recorder to forward copy of notice to trustee; and made minor changes in style.

Cross-References

Presumptions, Art. III, M.R.Ev. (see Title 26, ch. 10).

CHAPTER 2

MINING GENERALLY

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Chapter Cross-References

Restrictions on city annexation power, 7-2-4503, 7-2-4608.

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Classification of property for taxation, Title 15, ch. 6, part 1.

Mines taxation — general property and net proceeds tax, Title 15, ch. 23, part 5.

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Metal mines gross proceeds tax, Title 15, ch. 23, part 8.

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Marking land and mining claims in national forest, 81-4-218.

Part 1
Location and Record of Claims

82-2-101. Manner of locating claim. Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner:

(1) He shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there be more than one, the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. Where other monuments or monuments of lesser dimensions than those above described are used, it shall be a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting such notice, the locator shall comply with the United States mining laws.

History: En. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R.C.M. 1921; Cal. Civ. C. Sec. 1426; re-en. Sec. 7365, R.C.M. 1935; amd. Sec. 1, Ch. 4, Ex. L. 1971; R.C.M. 1947, 50-701.

Cross-References

Marking land and mining claims in national forest, 81-4-218.

Defective locations good against persons with notice, 82-2-112.

Filing of false mining claims, 82-2-115.

82-2-102. Record of certificate of location. (1) Within 60 days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated. The record shall consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated by projected survey lines, if located in unsurveyed country;

(d) the directions and distances from the discovery point which describe the claim.

(2) The certificate of location must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified or a certified copy thereof is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section.

History: En. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R.C.M. 1921; re-en. Sec. 7366, R.C.M. 1935; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973; R.C.M. 1947, 50-702; amd. Sec. 1, Ch. 137, L. 1991.

Cross-References

Clerk's duty to record notice of location, 7-4-2613.

Filing of false mining claims, 82-2-115.

82-2-103. Affidavit of performance of annual work. (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own or an affidavit of the person who performed such work or made the improvements, showing:

(a) the name of the mining claim or claims;

(b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;

(c) the book and page numbers wherein the original or latest amended relocation for each claim is recorded;

(d) the number of days' work done and the character and value of the improvements placed thereon or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

(e) the dates between which such work or improvements were effected;

(f) at whose instance the work was done or the improvements made;

(g) the actual amount paid for work and improvements and by whom paid when the same was not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. Said point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavit or a certified copy thereof is prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R.C.M. 1921; Cal. Civ. C. Sec. 1426m; re-en. Sec. 7368, R.C.M. 1935; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973; amd. Sec. 1, Ch. 112, L. 1974; R.C.M. 1947, 50-704.

Cross-References

Clerk's duty to record affidavit of performance, 7-4-2613.

Clerk's duty to maintain index of affidavits of performance, 7-4-2619.

Fee for recording and indexing affidavits of performance, 7-4-2631.

82-2-104. Millsites. Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.

History: En. Sec. 3, Ch. 16, L. 1907; Sec. 2285, Rev. C. 1907; re-en. Sec. 7369, R.C.M. 1921; re-en. Sec. 7369, R.C.M. 1935; R.C.M. 1947, 50-705.

82-2-105. Relocation of abandoned claim. The relocator of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working existing upon such claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in such shaft or other working, he shall perform the same discovery work as is required in the case of an original location.

History: En. Sec. 4, Ch. 16, L. 1907; Sec. 2286, Rev. C. 1907; re-en. Sec. 7370, R.C.M. 1921; re-en. Sec. 7370, R.C.M. 1935; R.C.M. 1947, 50-706.

82-2-106. Rights of relocator. The rights of a relocator of any abandoned or forfeited mining claim hereafter relocated shall date from the posting of his notice of location thereon, and while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any reentry or resumption of work by the former locator or claimant.

History: En. Sec. 5, Ch. 16, L. 1907; Sec. 2287, Rev. C. 1907; re-en. Sec. 7371, R.C.M. 1921; re-en. Sec. 7371, R.C.M. 1935; R.C.M. 1947, 50-707.

82-2-107. Amended location. A locator or claimant may at any time amend his location and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.

History: En. Sec. 6, Ch. 16, L. 1907; Sec. 2288, Rev. C. 1907; re-en. Sec. 7372, R.C.M. 1921; re-en. Sec. 7372, R.C.M. 1935; R.C.M. 1947, 50-708.

Cross-References

Amended locations, 82-2-114.

82-2-108. Relocation by owner. A locator or claimant may at any time relocate his own claim for any purpose, except to avoid the performance of annual labor thereon, and, by such relocation, may change the boundaries of his claim or the point of discovery, or both, but such relocation must comply in all respects with the requirements of this law as to an original location.

History: En. Sec. 7, Ch. 16, L. 1907; Sec. 2289, Rev. C. 1907; re-en. Sec. 7373, R.C.M. 1921; re-en. Sec. 7373, R.C.M. 1935; R.C.M. 1947, 50-709.

82-2-109. Amendment or relocation not a waiver of acquired rights. Where a locator or claimant amends or relocates his own claim, such amendment or relocation shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, he may rely either upon the original location or the location as amended or relocated or upon both; provided that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery.

History: En. Sec. 8, Ch. 16, L. 1907; Sec. 2290, Rev. C. 1907; re-en. Sec. 7374, R.C.M. 1921; re-en. Sec. 7374, R.C.M. 1935; R.C.M. 1947, 50-710.

82-2-110. Rights of third persons not affected. No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with any third person's right existing at the time of such amendment or relocation.

History: En. Sec. 9, Ch. 16, L. 1907; Sec. 2291, Rev. C. 1907; re-en. Sec. 7375, R.C.M. 1921; re-en. Sec. 7375, R.C.M. 1935; R.C.M. 1947, 50-711.

82-2-111. Validating locations already made. All mining locations made and recorded under the laws of this state heretofore in force that in any respect have failed to conform to the requirements of such laws shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this part, be valid if the making and recording of such locations conform to the requirements of this part.

History: **En. Sec. 10, Ch. 16, L. 1907; Sec. 2292, Rev. C. 1907; re-en. Sec. 7376, R.C.M. 1921; re-en. Sec. 7376, R.C.M. 1935; R.C.M. 1947, 50-712.**

82-2-112. Defective locations good against persons with notice. The period of time prescribed by this law for the performance of any act shall not be deemed mandatory where the act is performed before the rights of third persons have intervened, and no defect in the posted notice or recorded certificate shall be deemed material, except as against one who has located the same ground or some portion thereof in good faith and without notice. Notice to an agent who makes a location in behalf of another shall be deemed notice to his principal, and notice to one of several coclaimants shall be deemed notice to all.

History: **En. Sec. 11, Ch. 16, L. 1907; Sec. 2293, Rev. C. 1907; re-en. Sec. 7377, R.C.M. 1921; re-en. Sec. 7377, R.C.M. 1935; R.C.M. 1947, 50-713.**

Cross-References

Record of certificate of location, 82-2-102.

82-2-113. Effect of patent. The issuance of a United States patent for a mining claim is considered conclusive evidence that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. However, if questions of priority are involved, the date of the location shall be an issuable fact when it is claimed to have been prior to the date of the record of the location.

History: **En. Sec. 12, Ch. 16, L. 1907; Sec. 2294, Rev. C. 1907; re-en. Sec. 7378, R.C.M. 1921; re-en. Sec. 7378, R.C.M. 1935; amd. Sec. 10, Ch. 39, L. 1977; R.C.M. 1947, 50-714.**

Cross-References

List of conclusive presumptions, 26-1-601.

Presumptions in general, Rule 301, M.R.Ev. (see Title 26, ch. 10).

82-2-114. Amended locations. If, at any time, the locator of any mining claim heretofore or hereafter located or his successors or assigns shall apprehend that his original declaratory statement was defective or erroneous or that the requirements of law had not been complied with or shall be desirous of changing his boundaries or taking in any part of an overlapping claim which has been abandoned or in case his original declaratory statement was filed prior to the passage of this law and he shall be desirous of securing the benefit of this part, such locator or his successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part; provided that such relocation or filing of the amended or additional declaratory statement shall not interfere with the existing rights of others at the time of such relocation or filing of the amended or additional declaratory statement, and no such relocation or amended or additional declaratory statement or other record thereof shall preclude the claimant or claimants from proving any such title as he or they may have held under the previous location and notice thereof.

History: **En. Sec. 1, p. 56, L. 1901; re-en. Sec. 2295, Rev. C. 1907; re-en. Sec. 7379, R.C.M. 1921; Cal. Civ. C. Sec. 1426h; re-en. Sec. 7379, R.C.M. 1935; R.C.M. 1947, 50-715.**

Cross-References

Amended location, 82-2-107.

82-2-115. Filing of false mining claims. Every person who shall offer any location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself or for any other person or any person who shall procure others to do so, knowing that such claim or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than $5,000 or by both.

History: En. Sec. 1, Ch. 135, L. 1973; R.C.M. 1947, 50-702.1.

Cross-References

Felony defined, 45-2-101.

Part 2
Rights-of-Way and Eminent Domain

Part Cross-References

General provisions of eminent domain, Title 70, ch. 30.

82-2-201. Right-of-way of owners of mines. The owner of a mining claim held under the laws of the United States by patent or otherwise or under the local laws and customs of the state has a right-of-way over and across the land or mining claim of another, patented or otherwise, as prescribed in this part.

History: En. Sec. 1, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 886, 5th Div. Rev. Stat. 1879; re-en. Sec. 1495, Comp. Stat. 1887; amd. and re-en. Sec. 3630, Pol. C. 1895; re-en. Sec. 2297, Rev. C. 1907; re-en. Sec. 7382, R.C.M. 1921; re-en. Sec. 7382, R.C.M. 1935; R.C.M. 1947, 50-801.

Cross-References

Location and record of claims, Title 82, ch. 2, part 1.

82-2-202. Road or ditch right-of-way. Whenever a mine or mining claim is so situated that it cannot be conveniently worked without a road thereto or a ditch to convey water thereto or a ditch or a cut to convey the water therefrom or without a flume to carry water and tailings therefrom or without a shaft or tunnel thereto, which road, ditch, cut, flume, or tunnel must necessarily pass over, under, through, or across any lands or mining claims owned or occupied by another, such owner is entitled to a right-of-way for said road, ditch, cut, flume, shaft, or tunnel over, under, through, and across the lands or mining claims belonging to another, upon compliance with the provisions of this part.

History: En. Sec. 2, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 887, 5th Div. Rev. Stat. 1879; re-en. Sec. 1496, Comp. Stat. 1887; amd. and re-en. Sec. 3631, Pol. C. 1895; re-en. Sec. 2298, Rev. C. 1907; re-en. Sec. 7383, R.C.M. 1921; re-en. Sec. 7383, R.C.M. 1935; R.C.M. 1947, 50-802.

Cross-References

Highways — acquisition of property, Title 60, ch. 4, part 1.

Interference with canal or ditch easements, 70-17-112.

Easements over state lands, Title 77, ch. 2, part 1.

82-2-203. Proceedings to obtain right-of-way. Whenever such owner desires to work a mine or mining claim and it is necessary to enable him to do so successfully and conveniently that he should have a right-of-way for any of the purposes mentioned in the foregoing sections and if such right-of-way has not been acquired by agreement between him and the owner of the land or claims over, under, across, and upon which he seeks to establish such right-of-way, it is lawful for him to present to the judge of the district court a complaint asking that such right-of-way be awarded to him. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the lands to be affected by such right-of-way, with the names of the occupants or owners thereof, and may also set forth any tender or offer hereinafter mentioned.

History: En. Sec. 3, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 888, 5th Div. Rev. Stat. 1879; re-en. Sec. 1497, Comp. Stat. 1887; amd. and re-en. Sec. 3632, Pol. C. 1895; re-en. Sec. 2299, Rev. C. 1907; re-en. Sec. 7384, R.C.M. 1921; re-en. Sec. 7384, R.C.M. 1935; R.C.M. 1947, 50-803.

Cross-References

Easements over state lands, Title 77, ch. 2, part 1.

82-2-204. Proceedings before the court. Upon the receipt of the complaint and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint requiring them to appear before the judge on a day therein named, which must be not less than 10 days from the service thereof, and show cause why such right-of-way should not be allowed. The summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

History: En. Sec. 4, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 889, 5th Div. Rev. Stat. 1879; re-en. Sec. 1498, Comp. Stat. 1887; amd. and re-en. Sec. 3633, Pol. C. 1895; re-en. Sec. 2300, Rev. C. 1907; re-en. Sec. 7385, R.C.M. 1921; re-en. Sec. 7385, R.C.M. 1935; R.C.M. 1947, 50-804.

Cross-References

Service of summons, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

82-2-205. Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, and issue must be joined, and the judge must hear the allegations and proofs of the respective parties. If, upon such hearing, the judge is satisfied that the claims of the plaintiff can be worked conveniently only by means of the privilege asked for, he must make an order adjudging and awarding to the plaintiff such right-of-way and must appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by such order.

History: En. Sec. 5, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 890, 5th Div. Rev. Stat. 1879; re-en. Sec. 1499, Comp. Stat. 1887; amd. and re-en. Sec. 3634, Pol. C. 1895; re-en. Sec. 2301, Rev. C. 1907; re-en. Sec. 7386, R.C.M. 1921; re-en. Sec. 7386, R.C.M. 1935; amd. Sec. 11, Ch. 39, L. 1977; R.C.M. 1947, 50-805.

82-2-206. Commissioners to assess damages. The commissioners must be sworn to faithfully and impartially discharge their duties and must without delay examine the property, lands, and claims and assess the damages resulting from such right-of-way and report the amount to the judge, and if such right-of-way affects the property of more than one person, such report must contain an assessment of damages to each person.

History: En. Sec. 6, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 891, 5th Div. Rev. Stat. 1879; re-en. Sec. 1500, Comp. Stat. 1887; amd. and re-en. Sec. 3635, Pol. C. 1895; re-en. Sec. 2302, Rev. C. 1907; re-en. Sec. 7387, R.C.M. 1921; re-en. Sec. 7387, R.C.M. 1935; R.C.M. 1947, 50-806.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Assessing compensation, 70-30-302.

82-2-207. Power to set aside commissioners' report. For good cause shown, the judge may set aside the report of the commissioners and appoint three other commissioners.

History: En. Sec. 7, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 892, 5th Div. Rev. Stat. 1879; re-en. Sec. 1501, Comp. Stat. 1887; amd. and re-en. Sec. 3636, Pol. C. 1895; re-en. Sec. 2303, Rev. C. 1907; re-en. Sec. 7388, R.C.M. 1921; re-en. Sec. 7388, R.C.M. 1935; R.C.M. 1947, 50-807.

Cross-References

Appeal to District Court from assessment of Commissioners, 70-30-304.

82-2-208. Right-of-way to commence upon payment of assessed damages. Upon the payment of the sum assessed as damages and all costs to the persons to whom it is awarded or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right-of-way and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right-of-way so awarded.

History: En. Sec. 8, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 893, 5th Div. Rev. Stat. 1879; re-en. Sec. 1502, Comp. Stat. 1887; amd. and re-en. Sec. 3637, Pol. C. 1895; re-en. Sec. 2304, Rev. C. 1907; re-en. Sec. 7389, R.C.M. 1921; re-en. Sec. 7389, R.C.M. 1935; R.C.M. 1947, 50-808.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

82-2-209. Appeal from assessment of damages. An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within 10 days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

History: En. Sec. 9, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 894, 5th Div. Rev. Stat. 1879; re-en. Sec. 1503, Comp. Stat. 1887; amd. and re-en. Sec. 3638, Pol. C. 1895; re-en. Sec. 2305, Rev. C. 1907; re-en. Sec. 7390, R.C.M. 1921; re-en. Sec. 7390, R.C.M. 1935; R.C.M. 1947, 50-809.

Cross-References

Costs, Title 25, ch. 10.

82-2-210. Trial on appeal and costs. On appeal, the question of the amount of damages may be tried by the court or jury as in other cases. If the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

History: En. Sec. 10, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 895, 5th Div. Rev. Stat. 1879; re-en. Sec. 1504, Comp. Stat. 1887; amd. and re-en. Sec. 3639, Pol. C. 1895; re-en. Sec. 2306, Rev. C. 1907; re-en. Sec. 7391, R.C.M. 1921; re-en. Sec. 7391, R.C.M. 1935; R.C.M. 1947, 50-810.

Cross-References

Trials, Title 25, ch. 7.

Costs, Title 25, ch. 10.

82-2-211. Payment of costs. All costs and expenses of the proceedings under the provisions of this part, except as provided in 82-2-210, must be paid by the plaintiff or party making the application. The judge may, if the right-of-way asked for is denied, allow the opposite party a reasonable counsel fee.

History: En. Sec. 3640, Pol. C. 1895; re-en. Sec. 2307, Rev. C. 1907; re-en. Sec. 7392, R.C.M. 1921; re-en. Sec. 7392, R.C.M. 1935; R.C.M. 1947, 50-811.

Cross-References

Costs, Title 25, ch. 10.

82-2-212. Appeal to supreme court. An appeal to the supreme court may be taken by either party as in other cases.

History: En. Sec. 3641, Pol. C. 1895; re-en. Sec. 2308, Rev. C. 1907; re-en. Sec. 7393, R.C.M. 1921; re-en. Sec. 7393, R.C.M. 1935; R.C.M. 1947, 50-812.

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

Appeal to Supreme Court, Title 25, ch. 12.

Appeal from District Court to Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Appeals from judgments and orders of District Courts, Rules 4 through 16, M.R.App.P. (see Title 25, ch. 21).

82-2-213 through 82-2-220 reserved.

82-2-221. Eminent domain for open-pit mining — purchase of property required. Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within 30 days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 70, chapters 30 and 31, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973; R.C.M. 1947, 50-813.

Cross-References

Open-pit mining of coal not public use for purposes of eminent domain, 70-30-102, 70-30-106.

Prospecting permits and mining leases for state lands, Title 77, ch. 3, part 1.

82-2-222. Construction of alternate facilities. Whenever it is sought to condemn streets, roads, alleys, or highways for the purposes stated in 82-2-221 hereof, there shall also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the plaintiff, and the court, in its final order of condemnation, may order the plaintiff to construct such reasonable and adequate alternate facilities as it deems appropriate under the circumstances.

History: En. Sec. 2, Ch. 240, L. 1961; R.C.M. 1947, 50-814.

82-2-223. Compensation for property. (1) The measure of compensation for the property located within 300 yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open-pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open-pit mining operations.

History: En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973; R.C.M. 1947, 50-815.

82-2-224. Notice of condemnation — filing of plat. Any party seeking to condemn property for open-pit mining purposes shall serve notice in writing on all owners and purchasers under contracts for deed of property within 300 yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

History: En. Sec. 4, Ch. 240, L. 1961; amd. Sec. 3, Ch. 304, L. 1973; R.C.M. 1947, 50-816; amd. Sec. 24, Ch. 526, L. 1983.

Cross-References

Documents subject to recording by County Clerk, 7-4-2613.

Fees of County Clerk, 7-4-2631.

Part 3

Landowner Notification of Surface Operations

82-2-301. Short title. This part may be referred to as "The Landowner Notification Act".

History: En. Sec. 1, Ch. 335, L. 1971; R.C.M. 1947, 50-1301.

82-2-302. Ascertaining ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971; R.C.M. 1947, 50-1302.

82-2-303. Written notice and approval required before commencement of operations. (1) The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land and the owner of a possessory right to said land are given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon such land, which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(2) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(3) In the case of city, county, state, or federally-owned lands, such person must first obtain the authorization or permit, if any, required by the applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: **En. Sec. 3, Ch. 335, L. 1971; R.C.M. 1947, 50-1303.**

Cross-References

City-County Planning Board not to prevent recovery of mineral resources, 76-1-113.

County zoning, Title 76, ch. 2, part 2.

Municipal zoning, Title 76, ch. 2, part 3.

Prospecting permits and mining leases for state-owned lands, Title 77, ch. 3, part 1.

Nonmetallic mineral leases authorized for state-owned lands, 77-3-201.

Coal leases authorized for state-owned lands, 77-3-301.

Oil and gas leases authorized for state-owned lands, 77-3-401.

Geothermal leases authorized for state-owned lands, 77-4-101.

82-2-304. Exemption — discovery pits on federal lands. Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this part.

History: **En. Sec. 4, Ch. 335, L. 1971; R.C.M. 1947, 50-1304.**

82-2-305. Exemption — operations pursuant to prospecting permits or other agreements. The provisions of this part shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: **En. Sec. 5, Ch. 335, L. 1971; amd. Sec. 1, Ch. 194, L. 1973; R.C.M. 1947, 50-1305.**

Cross-References

Prospecting permits and mining leases for state-owned lands, Title 77, ch. 3, part 1.

Nonmetallic mineral leases authorized for state-owned lands, 77-3-201.

Coal leases authorized for state-owned lands, 77-3-301.

Oil and gas leases authorized for state-owned lands, 77-3-401.

Geothermal leases authorized for state-owned lands, 77-4-101.

82-2-306. Violation — immunity of landowner. Any work done in violation of this part is punishable as a misdemeanor, and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: **En. Sec. 6, Ch. 335, L. 1971; R.C.M. 1947, 50-1306.**

Cross-References

Person defined, 1-1-201.

Definition of misdemeanor, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

Part 4
Assaying of Ore and Payment for Consignments

Part Cross-References

Deceptive business practices, 45-6-318.

82-2-401. Samplerooms required. Any person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal shall maintain a sampling-room or house to which the ore shippers, their agents, or representatives shall have access at all times during the sampling of ores or while the same is being carried on and in which shall be samples of all ores he or they may buy or smelt.

History: En. Sec. 1, Ch. 54, L. 1909; re-en. Sec. 3436, R.C.M. 1921; re-en. Sec. 3436, R.C.M. 1935; R.C.M. 1947, 50-201.

82-2-402. Samples of fifty pounds per ton to be retained until settlement. A person, association, or corporation which buys any ores upon an agreement to pay for them in amount dependent upon their metallic contents or smelts any ore shall retain from the pulp or crushed ore, as the same is sampled, a quantity of not less than 50 pounds out of each ton of ore, which quantity shall be selected regularly and at equal intervals from any lot of ore so bought or to be smelted, and shall keep this quantity separate from any other ores or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper, his agents, or representatives may take from the quantity so retained any part thereof for the purpose of sampling or assaying that part; however, the value of any part so taken by the owner or shipper may be deducted from the total value of the ore delivered by him.

History: En. Sec. 2, Ch. 54, L. 1909; re-en. Sec. 3437, R.C.M. 1921; re-en. Sec. 3437, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1977; R.C.M. 1947, 50-202.

Cross-References

Authority of Historical Society to preserve samples of minerals, 22-3-107.

82-2-403. Penalty for commingling foreign substances with ore. Any person or persons, corporation, association, or partnership which shall, with intent to defraud, in any manner whatever, introduce any foreign substance into any ore or commingle any foreign substance with any ore intended for sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt or into any sample retained for tests or assays, as provided in 82-2-402, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $1,000 or by imprisonment in the county jail for a period of not less than 60 days or more than 12 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 54, L. 1909; amd. Sec. 1, Ch. 44, L. 1921; re-en. Sec. 3438, R.C.M. 1921; re-en. Sec. 3438, R.C.M. 1935; R.C.M. 1947, 50-203.

Cross-References

Deceptive business practices, 45-6-318.

82-2-404. Umpire assayers — appointment, qualifications, and duties. A person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt them, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who has operated an assay office or chemical laboratory for at least 1 year. The person, association, or corporation shall submit to the selected assayer all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of the ore. The chosen assayer shall be known as the umpire for the person, association, or corporation.

History: En. Sec. 1, Ch. 115, L. 1909; re-en. Sec. 3439, R.C.M. 1921; re-en. Sec. 3439, R.C.M. 1935; amd. Sec. 2, Ch. 39, L. 1977; R.C.M. 1947, 50-204; amd. Sec. 1, Ch. 27, L. 1979.

82-2-405. Notice of selection. Upon the selection of the umpire, who shall be actively engaged in the assaying business in this state, the person, association, or corporation selecting him shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and without the room or house where the sampling of ores is carried on by the person, association, or corporation.

History: En. Sec. 2, Ch. 115, L. 1909; re-en. Sec. 3440, R.C.M. 1921; re-en. Sec. 3440, R.C.M. 1935; amd. Sec. 3, Ch. 39, L. 1977; R.C.M. 1947, 50-205.

82-2-406. Violation — penalty. Every person, association, or corporation engaged in the sampling of ores belonging to others which fails to comply with the provisions of 82-2-404 or 82-2-405 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or less than $500.

History: En. Sec. 3, Ch. 115, L. 1909; re-en. Sec. 3441, R.C.M. 1921; re-en. Sec. 3441, R.C.M. 1935; R.C.M. 1947, 50-206.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

82-2-407 through 82-2-420 reserved.

82-2-421. Time for payment for ores. (1) Every person, association, company, or corporation engaged within this state in purchasing ores, minerals, or metals from or in smelting, milling, or otherwise reducing or preparing the same for market for any other person or persons, association, company, or corporation shall, within 20 days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction.

(2) However, the provisions of this section shall not be applicable to any such ores, minerals, or metals received pursuant to an existing written contract at time of shipment between the consignor or consignors thereof and the person, association, company, or corporation receiving the same, where the time for settlement and payment is provided for in such contract.

History: En. Sec. 1, Ch. 37, L. 1911; re-en. Sec. 3442, R.C.M. 1921; re-en. Sec. 3442, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1953; R.C.M. 1947, 50-301(part).

Cross-References

Definition of contract, 28-2-101, 30-1-201.

Applicability of Uniform Commercial Code to contracts for sale of minerals, 30-2-105(1), 30-2-107.

82-2-422. Violation — penalty. Any person, association, company, or corporation violating any of the provisions of 82-2-421 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or less than $500.

History: En. Sec. 2, Ch. 37, L. 1911; re-en. Sec. 3443, R.C.M. 1921; re-en. Sec. 3443, R.C.M. 1935; R.C.M. 1947, 50-302.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

82-2-423. Statement by purchasers of ore from leased mines. A person or corporation buying or treating ores from leased mines or mining claims shall furnish the lessor and the lessee of the mines or mining claims a true and correct copy of the statement of returns of ores from the sale or shipment. The statement shall show both the gross and net proceeds derived from the sale or shipment of ores. Upon shipment of the ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating them the names and post-office addresses of the lessor and the lessee interested in that shipment of ores, and within 7 days after receipt of the statement from the sampling works or smelter, the shipper shall make settlement with the lessor and the lessee for the shipment or sale of ores, based upon the statement received by the parties from the sampling works or smelter.

History: En. Sec. 1, Ch. 79, L. 1921; re-en. Sec. 3444, R.C.M. 1921; re-en. Sec. 3444, R.C.M. 1935; amd. Sec. 4, Ch. 39, L. 1977; R.C.M. 1947, 50-303.

82-2-424. Copy of statement to lessee. Sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought from or treated for lessors of mines to the lessee of the mine or mining claim from which the ores were extracted at the same time the statement is furnished to the lessor of the mine or mining claim or shipper of the ore.

History: En. 3444.1, R.C.M. 1935 by Sec. 1, Ch. 17, L. 1937; amd. Sec. 5, Ch. 39, L. 1977; R.C.M. 1947, 50-304.

82-2-425. Shipper — penalty for violation. A person or corporation who, as the shipper, violates 82-2-423, as amended, is liable to the lessor and the lessee for 10% of the net returns from the shipment or sale of ores referred to in that section, in addition to the value of the interest of the lessor and the lessee in the shipment. This amount may be recovered in an action in any court of competent jurisdiction.

History: En. Sec. 2, Ch. 79, L. 1921; re-en. Sec. 3445, R.C.M. 1921; re-en. Sec. 3445, R.C.M. 1935; amd. Sec. 6, Ch. 39, L. 1977; R.C.M. 1947, 50-305.

82-2-426. Smelters — penalty for violation. Any person or corporation operating any sampling works or smelter within this state who shall violate any of the provisions of 82-2-423 and 82-2-424 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not less than $50 or more than $100.

History: En. Sec. 3, Ch. 79, L. 1921; re-en. Sec. 3446, R.C.M. 1921; re-en. Sec. 3446, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1937; R.C.M. 1947, 50-306.

Cross-References

Person defined, 1-1-201.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 3

COAL MINING
(Repealed)

Part 1

Coal Conservation
(Repealed. Sec. 21, Ch. 550, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

82-3-101. En. Sec. 1, Ch. 220, L. 1973; R.C.M. 1947, 50-1401.

82-3-102. En. Sec. 2, Ch. 220, L. 1973; R.C.M. 1947, 50-1402.

82-3-103. En. Sec. 3, Ch. 220, L. 1973; R.C.M. 1947, 50-1403.

82-3-104. En. Sec. 4, Ch. 220, L. 1973; amd. Sec. 15, Ch. 39, L. 1977; amd. Sec. 4, Ch. 352, L. 1977; R.C.M. 1947, 50-1404.

82-3-105. En. Sec. 5, Ch. 220, L. 1973; R.C.M. 1947, 50-1405.

82-3-106. En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(1).

82-3-107. En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(2).

82-3-108. En. Sec. 8, Ch. 220, L. 1973; R.C.M. 1947, 50-1408.

82-3-109. En. Sec. 7, Ch. 220, L. 1973; R.C.M. 1947, 50-1407.

82-3-110. En. Sec. 10, Ch. 220, L. 1973; R.C.M. 1947, 50-1409.

Part 2

Coal Invoices
(Repealed. Sec. 1, Ch. 24, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

82-3-201. En. Sec. 1, Ch. 104, L. 1927; re-en. Sec. 3546.1, R.C.M. 1935; R.C.M. 1947, 50-601.

82-3-202. En. Sec. 2, Ch. 104, L. 1927; re-en. Sec. 3546.2, R.C.M. 1935; R.C.M. 1947, 50-602.

82-3-203. En. Sec. 4, Ch. 104, L. 1927; re-en. Sec. 3546.4, R.C.M. 1935; amd. Sec. 117, Ch. 431, L. 1975; R.C.M. 1947, 50-604; amd. Sec. 2, Ch. 274, L. 1981.

82-3-204. En. Sec. 6, Ch. 104, L. 1927; re-en. Sec. 3546.6, R.C.M. 1935; amd. Sec. 118, Ch. 431, L. 1975; R.C.M. 1947, 50-606; amd. Sec. 2, Ch. 274, L. 1981.

82-3-205. En. Sec. 5, Ch. 104, L. 1927; re-en. Sec. 3546.5, R.C.M. 1935; R.C.M. 1947, 50-605; amd. Sec. 80, Ch. 10, L. 1993.

CHAPTER 4

RECLAMATION

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82-4-445. Reclamation of abandoned mine sites.
82-4-446. Filing of lien for abandoned mine reclamation project.

Chapter Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Environment — protection and improvement, Art. IX, sec. 1, Mont. Const.

Reclamation required, Art. IX, sec. 2, Mont. Const.

Wage protection for certain employees of mineral and oil industry, Title 39, ch. 3, part 5.

Hours of labor — hoisting engineers, 39-4-101.

Hours of labor — underground miners, 39-4-103.

Strip mining defined — hours of labor, 39-4-104.

Hours of labor for state and municipal governments, mines, mills, and smelters, 39-4-107.

Mining wastes — applicability of solid waste laws, 75-10-103, 75-10-203.

Montana Major Facility Siting Act, Title 75, ch. 20.

Master plans of city providing for conservation of mineral resources, 76-1-601.

Zoning district law not to prevent recovery of mineral resources, 76-2-209.

Mining wastes — applicability of pesticide laws, 80-8-110.

Hard-rock mining impact, Title 90, ch. 6, part 3.

Part 1

Strip and Underground Mine Siting

82-4-101. Short title. This part shall be known and may be cited as "The Strip and Underground Mine Siting Act".

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974; amd. Sec. 1, Ch. 441, L. 1975; R.C.M. 1947, 50-1601.

82-4-102. Policy and purpose. (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to insure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(3) This part is deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974; amd. Sec. 2, Ch. 441, L. 1975; R.C.M. 1947, 50-1602; amd. Sec. 360, Ch. 418, L. 1995.

Cross-References

Legislature to provide for protection and improvement of environment, Art. IX, sec. 1, Mont. Const.

82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Mineral" means mineral as defined in 82-4-203.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land that the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974; amd. Sec. 3, Ch. 441, L. 1975; R.C.M. 1947, 50-1603; amd. Sec. 191, Ch. 575, L. 1981; amd. Sec. 361, Ch. 418, L. 1995.

82-4-104. Application. The provisions of this part shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under 82-4-221 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974; R.C.M. 1947, 50-1617.

82-4-105 through 82-4-110 reserved.

82-4-111. Rules of board — hearings. The board shall adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part and rules regarding filing of reports, issuance of permits, and other matters of procedure and administration.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974; amd. Sec. 4, Ch. 441, L. 1975; R.C.M. 1947, 50-1604; amd. Sec. 362, Ch. 418, L. 1995.

Cross-References

Adoption of rules by administrative agencies, Title 2, ch. 4, part 3.

Hearings subject to Montana Administrative Procedure Act, 82-4-130.

82-4-112. Administration. The department shall:

(1) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) issue, after an opportunity for hearing, orders requiring an operator to adopt remedial measures necessary to comply with this part and rules adopted under this part;

(3) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or permit issued pursuant to this part;

(4) issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by the notice of noncompliance, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(5) order the halting of any operation that is started without first having secured a permit as required by this part;

(6) conduct hearings under provisions of this part or rules adopted by the board;

(7) make investigations and inspections necessary to insure compliance with this part;

(8) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974; amd. Sec. 5, Ch. 441, L. 1975; R.C.M. 1947, 50-1605; amd. Sec. 363, Ch. 418, L. 1995.

Cross-References

Adoption of rules by administrative agencies, Title 2, ch. 4, part 3.

Hearings in contested cases, Title 2, ch. 4, part 6.

Suspension and revocation of permits by Department, 82-4-129.

Hearings subject to Montana Administrative Procedure Act, 82-4-130.

Mandamus to compel enforcement, 82-4-142.

82-4-113. Receipts paid into general fund. Except for bond forfeiture moneys, all fees, penalties, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to the general fund.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974; amd. Sec. 10, Ch. 441, L. 1975; R.C.M. 1947, 50-1610; amd. Sec. 1, Ch. 31, L. 1981.

Cross-References

Expenditure only upon legislative appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

82-4-114 through 82-4-120 reserved.

82-4-121. Permit required. No person may commence preparatory work until the operator shall have first obtained from the department a mine-site location permit for a new strip mine or a new underground mine or a permit under part 2 of this chapter, if the application for such permit includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974; amd. Sec. 6, Ch. 441, L. 1975; R.C.M. 1947, 50-1606.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) The department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(1), (3).

Cross-References

Duration of lease when lands described in mine-site location permit, 77-3-314.

Contents of application for strip-mine permit, 82-4-222.

82-4-123. Permit fee and surety bond. A fee of $50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 or more than $10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of $5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: **En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(4); amd. Sec. 364, Ch. 418, L. 1995.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

82-4-124. Permit — authority under and renewal. A mine-site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of 1 year from the date of issuance and is renewable until the applicant has applied for and received a strip-mining or underground-mining permit in accordance with part 2 of this chapter.

History: **En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(2).**

82-4-125. Refusal of permit. (1) The department may not issue a permit under this part if it finds that a new strip mine or a new underground mine is not consistent with the purposes and policies of this part.

(2) The department shall not approve a new strip-mining site, a new underground-mining site, or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in 82-4-227.

(3) The department shall not issue a permit under this part if a proposed reclamation plan does not meet the requirements of part 2 of this chapter.

History: **En. 50-1608 by Sec. 8, Ch. 280, L. 1974; amd. Sec. 8, Ch. 441, L. 1975; R.C.M. 1947, 50-1608.**

Cross-References

Policy and purpose of part, 82-4-102.

82-4-126. When information may be used to meet strip-mining or underground-mining permit requirements. The department may choose to accept information submitted under this part to the extent it is applicable and relevant as satisfying the requirements of part 2 of this chapter.

History: **En. 50-1614 by Sec. 14, Ch. 280, L. 1974; amd. Sec. 11, Ch. 441, L. 1975; R.C.M. 1947, 50-1614.**

Cross-References

Contents of application for strip-mine permit, 82-4-222.

82-4-127. Effect of siting permit on subsequent mining permits. When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion thereof on the grounds listed in 82-4-227(2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip-mining or underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter which indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation develops because of strip-mining or underground-mining operations which was not in existence at the time of the issuance of a permit under this part.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974; amd. Sec. 13, Ch. 441, L. 1975; R.C.M. 1947, 50-1616.

82-4-128. Termination of permit. A mine-site location permit granted by the department in accordance with the provisions of this part shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine-site location permit for which a strip-mining or an underground-mining permit is granted pursuant to the provisions of part 2 of this chapter shall be released from the terms and provisions of the mine-site location permit.

History: En. 50-1615 by Sec. 15, Ch. 280, L. 1974; amd. Sec. 12, Ch. 441, L. 1975; R.C.M. 1947, 50-1615.

82-4-129. Noncompliance — suspension of permits. (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974; amd. Sec. 9, Ch. 441, L. 1975; R.C.M. 1947, 50-1609; amd. Sec. 365, Ch. 418, L. 1995.

Cross-References

Hearings in contested cases, Title 2, ch. 4, part 6.

Orders and rules of Board — hearings, 82-4-111.

Reclamation by Board, 82-4-239, 82-4-240.

82-4-130. Procedure for hearings and appeals. All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974; R.C.M. 1947, 50-1613.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Orders and rules of Board — hearings, 82-4-111.

82-4-131 through 82-4-140 reserved.

82-4-141. Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the director, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than $500 and not more than $5,000. Each day on which a violation occurs constitutes a separate offense.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974; R.C.M. 1947, 50-1611; amd. Sec. 366, Ch. 418, L. 1995.

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Disposition of fines and forfeitures, 46-18-603.

Person defined, 82-4-103.

82-4-142. Mandamus to compel enforcement. (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974; R.C.M. 1947, 50-1612; amd. Sec. 2, Ch. 201, L. 1979.

Cross-References

Knowingly defined, 1-1-204, 45-2-101.

Rules for determining residency, 1-1-215.

Contempts, Title 3, ch. 1, part 5.

Mandamus, Title 27, ch. 26.

Part 2
Coal and Uranium Mine Reclamation

Part Cross-References

Reclamation required, Art. IX, sec. 2, Mont. Const.

Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.

State equalization aid — severance tax on coal as revenue, 20-9-343.

Safety in coal mines, Title 50, ch. 73.

Unreclaimed land subject to eminent domain, 70-30-102.

Eminent domain — policy on surface mining or open-pit mining of coal, 70-30-102, 70-30-106.

State lands — coal mining leases and permits, Title 77, ch. 3, part 3.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

Strip- and underground-mine siting, Title 82, ch. 4, part 1.

Planning and abatement of community impact caused by coal resources development, Title 90, ch. 6, part 2.

Executive and legislative agencies to assist tribes in coal development, 90-11-102.

82-4-201. Short title. This part shall be known and may be cited as "The Montana Strip and Underground Mine Reclamation Act".

History: En. Sec. 1, Ch. 325, L. 1973; amd. Sec. 14, Ch. 441, L. 1975; R.C.M. 1947, 50-1034.

82-4-202. Policy — findings. (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives; and

(g) provide for the orderly development of coal resources through strip or underground mining to assure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which

5-year permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and, in particular, a response to the mandate expressed in Article IX thereof and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. Sec. 2, Ch. 325, L. 1973; amd. Sec. 15, Ch. 441, L. 1975; R.C.M. 1947, 50-1035; amd. Sec. 1, Ch. 550, L. 1979.

Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Environment — protection and improvement, Art. IX, sec. 1, Mont. Const.

82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(4) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of environmental review provided for in 2-15-3502.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

(8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(11) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(12) "Department" means the department of environmental quality provided for in 2-15-3501.

(13) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation. However, the nonremoval or nonutilization of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(14) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(15) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(16) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(17) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(18) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(19) "Mineral" means coal and uranium.

(20) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(21) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

(22) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(23) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(24) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

(25) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(26) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(27) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(28) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(29) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(30) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or

(c) the state of Montana when the state owns the surface.

(31) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(32) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

(33) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

(34) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(35) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part.

History: En. Sec. 3, Ch. 325, L. 1973; amd. Sec. 1, Ch. 209, L. 1974; amd. Sec. 1, Ch. 235, L. 1974; amd. Sec. 16, Ch. 441, L. 1975; amd. Sec. 1, Ch. 538, L. 1975; R.C.M. 1947, 50-1036; amd. Sec. 2, Ch. 550, L. 1979; amd. Sec. 1, Ch. 437, L. 1981; amd. Sec. 1, Ch. 70, L. 1987; amd. Sec. 1, Ch. 147, L. 1991; amd. Sec. 1, Ch. 225, L. 1993; amd. Sec. 1, Ch. 159, L. 1995; amd. Sec. 367, Ch. 418, L. 1995; amd. Sec. 2, Ch. 196, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 196 in definition of operator inserted (d) concerning a person who is engaged in uranium mining using in situ methods; in definition of prospecting, in (a)(ii) before "mineral", deleted "natural"; and made minor changes in style. Amendment effective April 3, 1997.

Retroactive Applicability: Section 8, Ch. 196, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992."

82-4-204. Board rules. (1) The board shall adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part.

(2) The board may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration.

History: En. Sec. 4, Ch. 325, L. 1973; amd. Sec. 17, Ch. 441, L. 1975; R.C.M. 1947, 50-1037; amd. Sec. 3, Ch. 550, L. 1979; amd. Sec. 368, Ch. 418, L. 1995.

Cross-References

Adoption of rules by administrative agencies, Title 2, ch. 4, part 3.

82-4-205. Administration by department. The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

(3) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(4) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(5) shall issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by notice of noncompliance, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(6) shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(7) shall conduct hearings under the provisions of this part or rules adopted by the board;

(8) shall make investigations and inspections necessary to ensure compliance with this part;

(9) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(10) may conduct hearings under the provisions of this part.

History: En. Sec. 5, Ch. 325, L. 1973; amd. Sec. 18, Ch. 441, L. 1975; R.C.M. 1947, 50-1038; amd. Sec. 4, Ch. 550, L. 1979; amd. Sec. 369, Ch. 418, L. 1995; amd. Sec. 3, Ch. 273, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 273 deleted former (10) that read: "(10) may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration"; and made minor changes in style. Amendment effective April 16, 1997.

Cross-References

Adoption of rules by administrative agencies, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Noncompliance — suspension and revocation of permits, 82-4-251.

Mandamus to compel enforcement, 82-4-252.

82-4-206. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4, Title 2.

History: En. Sec. 24, Ch. 325, L. 1973; R.C.M. 1947, 50-1057.

82-4-207 through 82-4-220 reserved.

82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice,

have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the permit application requirements and procedures.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(1); amd. Sec. 5, Ch. 550, L. 1979; amd. Sec. 2, Ch. 437, L. 1981; amd. Sec. 2, Ch. 159, L. 1995.

Cross-References

Duration of lease of state lands described in strip-mine permit, 77-3-314.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-222. Permit application. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application.

(n) a coal conservation plan; and

(o) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through (2)(n). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work,

highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(5) thru (7); amd. Sec. 1, Ch. 196, L. 1979; amd. Sec. 6, Ch. 550, L. 1979; amd. Sec. 3, Ch. 437, L. 1981; amd. Sec. 25, Ch. 526, L. 1983; amd. Sec. 2, Ch. 70, L. 1987; amd. Sec. 57, Ch. 16, L. 1991.

Cross-References

Documents subject to recording by County Clerk, 7-4-2613.

Recording fees of County Clerk, 7-4-2631.

Additional requirements of reclamation plan, 82-4-231(2).

Hearing on application for permit, 82-4-231(2).

82-4-223. Permit fee and surety bond. (1) An application fee of $100 shall be paid before the permit required in this part shall be issued.

(2) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 for each acre or fraction thereof of the area of land affected, with a minimum bond of $10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable

use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(8); amd. Sec. 7, Ch. 550, L. 1979; amd. Sec. 3, Ch. 70, L. 1987; amd. Sec. 370, Ch. 418, L. 1995.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

82-4-224. Repealed. Sec. 1, Ch. 371, L. 1993.

History: En. 50-1039.1 by Sec. 2, Ch. 538, L. 1975; R.C.M. 1947, 50-1039.1.

82-4-225. Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of $50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below $10,000, except as provided in 82-4-223.

History: En. Sec. 7, Ch. 325, L. 1973; amd. Sec. 2, Ch. 352, L. 1977; R.C.M. 1947, 50-1040; amd. Sec. 8, Ch. 550, L. 1979.

82-4-226. Prospecting permit. (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will

be employed on the affected land. The application must also include any other or further information that the department may require.

(3) The application must be accompanied by a fee of $100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (7). In addition, prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through (7). However, a person who conducts prospecting described in this subsection shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

History: En. Sec. 8, Ch. 325, L. 1973; amd. Sec. 20, Ch. 441, L. 1975; R.C.M. 1947, 50-1041; amd. Sec. 2, Ch. 196, L. 1979; amd. Sec. 2, Ch. 225, L. 1993; amd. Sec. 3, Ch. 159, L. 1995; amd. Sec. 371, Ch. 418, L. 1995; amd. Sec. 3, Ch. 196, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 196 in (8), in first sentence before "mineral", deleted "natural" and after "deposit" inserted "and that does not remove more than 250 tons of coal" and in second sentence, before "mineral", deleted "natural" and after "deposit" inserted "outside an area designated unsuitable, that does not remove more than 250 tons of coal"; and made minor changes in style. Amendment effective April 3, 1997.

Retroactive Applicability: Section 8, Ch. 196, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992."

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

Reclamation plan and maps required, 82-4-222.

Reclamation surety bond required, 82-4-223.

Inspection of vegetation — release of bond, 82-4-235.

Annual report for mining permit, 82-4-237.

82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of an occupied dwelling, unless waived by the owner;

(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) within 100 feet of a cemetery;

(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) Strip- or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that a strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any

strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted on lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress.

History: En. Sec. 9, Ch. 325, L. 1973; amd. Sec. 21, Ch. 441, L. 1975; R.C.M. 1947, 50-1042; amd. Sec. 9, Ch. 550, L. 1979; amd. Sec. 3, Ch. 225, L. 1993; amd. Sec. 372, Ch. 418, L. 1995.

Cross-References

Safety in mines, Title 50, ch. 72, 73.

Policy — findings, 82-4-202.

Action on application for permit — written findings required, 82-4-231.

Suspension or revocation of permit for repeated violations, 82-4-251.

82-4-228. Designation of land unsuitable for coal mining. (1) Any person having an interest that is or may be adversely affected may petition the department to have an area designated as unsuitable for strip- or underground-coal-mining operations or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition, the department shall hold a public hearing in the locality of the affected area after giving appropriate notice and publication of the date, time, and location thereof. Before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons therefor. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(2) If petitioned, the department shall review the area petitioned for pursuant to this section and:

(a) shall designate it as an area unsuitable for all or certain types of strip- or underground-coal-mining operations if it is determined that reclamation pursuant to the requirements of this part is not technologically and economically feasible; and

(b) may designate it as an area unsuitable for all or certain types of strip or underground coal mining if the proposed coal mining operations will:

(i) be incompatible with existing state or local land-use plans or programs to the extent they affect mining in the area; or

(ii) affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(iii) affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, these lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which these operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology.

(3) Prior to designating any land areas as unsuitable for strip- or underground-coal-mining operations, the department shall prepare a detailed statement on:

(a) the potential coal resources of the area;

(b) the demand for coal resources; and

(c) the impact of this designation on the environment, economy, and supply of coal.

(4) A designation does not prevent mineral exploration pursuant to this part of any area so designated.

(5) The requirements of this section do not apply to lands on which strip- or underground-coal-mining operations are being conducted pursuant to a permit issued under this part or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

History: En. Sec. 10, Ch. 550, L. 1979.

Cross-References

Coal exploration permit required, 82-4-121.

Coal prospecting permit required, 82-4-226.

Resource development and reclamation, Title 90, ch. 2.

82-4-229 and 82-4-230 reserved.

82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and

the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must address. The application shall be presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference shall not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when such concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the

materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area.

History: **En. Sec. 10, Ch. 325, L. 1973; amd. Sec. 22, Ch. 441, L. 1975; amd. Sec. 12, Ch. 39, L. 1977; R.C.M. 1947, 50-1043; amd. Sec. 11, Ch. 550, L. 1979; amd. Sec. 1, Ch. 289, L. 1985; amd. Sec. 373, Ch. 418, L. 1995.**

Cross-References

Safety in coal mines, Title 50, ch. 73.

Air quality control, Title 75, ch. 2.

Water quality control, Title 75, ch. 5.

Aquatic ecosystem protection, Title 75, ch. 7.

Control of hazardous wastes, Title 75, ch. 10, part 14.

Permit application — contents of reclamation plan, 82-4-222.

Coal conservation plan required, 82-4-222(1)(n).

Refusal of permit, 82-4-227.

Action in response to complaints related to use of explosives, 82-4-356.

82-4-232. Area mining required — bond — alternative plan. (1) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall may be no greater than 20 degrees from the horizontal. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks. The area of land affected must be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(l).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be used and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation at a minimum to:

(a) restore the land affected to a condition capable of supporting the use that it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not determined to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining.

History: En. Sec. 11, Ch. 325, L. 1973; amd. Sec. 23, Ch. 441, L. 1975; amd. Sec. 3, Ch. 352, L. 1977; R.C.M. 1947, 50-1044; amd. Sec. 1, Ch. 172, L. 1979; amd. Sec. 12, Ch. 550, L. 1979; amd. Sec. 1, Ch. 288, L. 1985; amd. Sec. 143, Ch. 370, L. 1987; amd. Sec. 374, Ch. 418, L. 1995; amd. Sec. 292, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (7), at end, substituted "82-4-222(1)(l)" for "82-4-222(1)(k)"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Water quality control, Title 75, ch. 5.
Policy — findings, 82-4-202.
Bond required, 82-4-223.
Release of remaining bond, 82-4-235.

82-4-233. *(Temporary)* **Planting of vegetation following grading of disturbed area.** (1) After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees as are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

(3) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) of this section.

82-4-233. *(Effective on occurrence of contingency)* **Planting of vegetation following grading of disturbed area.** (1) Except as provided in subsection (4), after the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant the legumes, grasses, shrubs, and trees that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover must be defined by rules of the board.

(3) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

(4) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department pursuant to subsection (2) and on which the reclaimed vegetation otherwise meets the requirements of subsection (1) and

applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation.

History: **En. Sec. 12, Ch. 325, L. 1973; amd. Sec. 24, Ch. 441, L. 1975; R.C.M. 1947, 50-1045; amd. Sec. 2, Ch. 172, L. 1979; amd. Sec. 4, Ch. 196, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 196 in (1), at beginning, inserted exception clause; inserted (4) considering introduced species as desirable and necessary to achieve postmining land use; and made minor changes in style. Amendment effective on occurrence of contingency.

Retroactive Applicability: Section 8, Ch. 196, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992."

Contingent Effective Date: Section 9(2), Ch. 196, L. 1997, provided: "[Section 4] [amending 82-4-233] is effective on the date that it is approved by the secretary of the United States department of the interior pursuant to 30 U.S.C. 1253."

82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.

History: **En. Sec. 13, Ch. 325, L. 1973; amd. Sec. 25, Ch. 441, L. 1975; R.C.M. 1947, 50-1046; amd. Sec. 3, Ch. 196, L. 1979.**

82-4-235. *(Temporary)* **Inspection of vegetation — final bond release.** Inspection and evaluation for permanent diverse vegetative cover must be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

82-4-235. *(Effective on occurrence of contingency)* **Inspection of vegetation — final bond release.** (1) Inspection and evaluation for permanent diverse vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(2) (a) Notwithstanding the provision in subsection (1), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232(8) and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (2)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (1).

History: En. Sec. 14, Ch. 325, L. 1973; R.C.M. 1947, 50-1047; amd. Sec. 4, Ch. 196, L. 1979; amd. Sec. 13, Ch. 550, L. 1979; amd. Sec. 1, Ch. 193, L. 1995; amd. Sec. 5, Ch. 196, L. 1997.

Compiler's Comments

1997 Amendment: (Version effective on occurrence of contingency) Chapter 196 in (1) deleted former third sentence that read: "For land that was seeded using a seed mix that included a substantial component of introduced species approved by the department pursuant to 82-4-233(2) and on which reclaimed vegetation otherwise meets the requirements of 82-4-233(1), approval of reclaimed vegetation for release of bond may not be withheld on the basis that introduced species compose a major or dominant component" and at beginning of third sentence deleted "Except as provided in subsection (2)(b)"; and made minor changes in style. Amendment effective April 3, 1997.

Retroactive Applicability: Section 8, Ch. 196, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992."

Contingent Effective Date: Section 2, Ch. 193, L. 1995, provided: "[This act] is effective on the date that it is approved by the secretary of the United States department of the interior pursuant to 30 U.S.C. 1253. If the secretary disapproves any portion of [this act], those provisions that are approved become effective on the date of approval."

Cross-References

Planting report required for prospecting permit, 82-4-226(7).

Release of bond, 82-4-232(6).

82-4-236. Vegetation as property of landowner. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this part or rules adopted under this part become the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise.

History: En. Sec. 15, Ch. 325, L. 1973; R.C.M. 1947, 50-1048.

Cross-References

Release of bond, 82-4-232(6), 82-4-235.

82-4-237. Operator to file annual reports. (1) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. In lieu of an annual report for each permit, the department may allow the operator to file an annual report for each operation on a date determined by the department. Included within an annual report shall be:

(a) the name and address of the operator and permit number or numbers;

(b) a report in such detail as the department shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted, the extent to which expectations and predictions made in the original application have been fulfilled and any deviation therefrom, and the number of acres affected; and

(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period.

(2) Upon receipt of the annual report, the department may make further inquiry and request further information and, if it does so, shall allow a reasonable opportunity for the operator to respond.

(3) When problem situations are revealed by review of new information or as a result of field inspections, the department may order such changes in the mining and reclamation plans as are necessary to insure compliance with this part.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(2) thru (4); amd. Sec. 5, Ch. 196, L. 1979; amd. Sec. 1, Ch. 68, L. 1983.

Cross-References

Annual report filed for prospecting permit, 82-4-226(7).

82-4-238. Successor operator. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this part as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this part, and the successor operator assumes, as part of his obligation under this part, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973; R.C.M. 1947, 50-1051.

82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine

the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 14, Ch. 550, L. 1979; amd. Sec. 26, Ch. 526, L. 1983; amd. Sec. 375, Ch. 418, L. 1995.

Cross-References

Documents subject to recording, 7-4-2613.

Fees of County Clerk, 7-4-2631.

Condemnation for restoration declared public use, 70-30-102(16).

Liens generally, Title 71, ch. 3, part 1.

82-4-240. Reclamation of lands after bond forfeited. In keeping with the provisions of this part, the department may reclaim any affected lands with respect to which a bond has been forfeited.

History: En. Sec. 21, Ch. 325, L. 1973; amd. Sec. 28, Ch. 441, L. 1975; R.C.M. 1947, 50-1054; amd. Sec. 2, Ch. 31, L. 1981; amd. Sec. 376, Ch. 418, L. 1995.

82-4-241. Receipts paid into general fund. Except for bond forfeiture moneys, all fees, penalties, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to the general fund.

History: En. Sec. 19, Ch. 325, L. 1973; amd. Sec. 26, Ch. 441, L. 1975; R.C.M. 1947, 50-1052; amd. Sec. 3, Ch. 31, L. 1981.

Cross-References

Expenditure only upon legislative appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

82-4-242. Funds received by department. The department may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 377, Ch. 418, L. 1995.

82-4-243. Subsidence. (1) The permittee of an underground coal mining operation shall:

(a) promptly repair or compensate for material damage to any occupied residential dwelling and related structures and to any noncommercial building resulting from subsidence caused by an underground coal mining operation. Repair of damage includes rehabilitation, restoration, or replacement. Compensation must be provided to the owner of the damaged property and must be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(b) promptly replace any drinking, domestic, or residential water supply from a well or spring that was in existence prior to the application for the permit pursuant to 82-4-222 and that has been affected by contamination, diminution, or interruption resulting from the underground coal mining operation.

(2) This section may not be construed to prohibit or interrupt an underground coal mining operation.

(3) This section does not abrogate, impair, or diminish any right or remedy granted under another provision of this part or any other law.

History: En. Sec. 1, Ch. 196, L. 1997.

Compiler's Comments

Retroactive Applicability: Section 8, Ch. 196, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992."

Effective Date: Section 9(1), Ch. 196, L. 1997, provided: "Except as provided in subsection (2) [providing a separate effective date for the 1997 amendment to 82-4-233], [this act] is effective on passage and approval." Approved April 3, 1997.

82-4-244 through 82-4-250 reserved.

82-4-251. Noncompliance — suspension of permits. (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that the director or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit

condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the director or an authorized representative shall issue a notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the director or an authorized representative also finds that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that the violations are willfully caused by the permittee, the director or an authorized representative shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. When a permit has been revoked, the department may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any

notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) A person who has been issued a notice or an order of cessation pursuant to this section or a person who has an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation must provide an opportunity for public hearing at the request of the applicant or the person who has an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

History: En. Sec. 17, Ch. 325, L. 1973; R.C.M. 1947, 50-1050; amd. Sec. 15, Ch. 550, L. 1979; amd. Sec. 4, Ch. 437, L. 1981; amd. Sec. 1, Ch. 162, L. 1983; amd. Sec. 378, Ch. 418, L. 1995.

Cross-References

Willfully defined, 1-1-204.

Contested administrative cases, Title 2, ch. 4, part 6.

Appeal of contested administrative cases, Title 2, ch. 4, part 7.

Suspension and revocation of permits by Department, 82-4-205.

82-4-252. Mandamus. (1) A resident of this state or any person having an interest which is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest which is or may be adversely affected may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued hereunder. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued hereunder. Any person may intervene as a matter of right in any such civil action. Nothing in this section restricts any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder or to seek any other relief.

(4) Any person who is injured in his person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages (including reasonable attorney and expert witness fees) only in the county in which the strip- or underground-coal-mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under chapter 71 of Title 39.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.

History: En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(1), (2); amd. Sec. 3, Ch. 201, L. 1979; amd. Sec. 16, Ch. 550, L. 1979; amd. Sec. 192, Ch. 575, L. 1981.

Cross-References

Knowingly defined, 1-1-204, 45-2-101.
Rules for determining residency, 1-1-215.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

82-4-253. Suit for damage to water supply. (1) An owner of an interest in real property who obtains all or part of a supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining or underground mining.

(2) Prima facie evidence of injury in a suit under this section is established by the removal of coal or disruption of overlying aquifer from designated ground water areas as prescribed in Title 85, chapter 2, part 5. If the area is not a designated ground water area, a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to the defendant (operator) to show that the plaintiff's (owner's) water supply was not injured thereby.

(3) An owner of water rights adversely affected may file a complaint detailing the loss of water in quality and quantity with the department. Upon receipt of this complaint the department shall:

(a) investigate the complaint using all available information including monitoring data gathered at the mine site;

(b) require the defendant (operator) to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(e) order the suspension of the operator's permit for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as expressly provided.

History: **En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(3) thru (5); amd. Sec. 293, Ch. 42, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 42 in (2), in first sentence, substituted "section" for "subsection"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Authority of Department of Environmental Quality to establish water quality standards, 75-5-301.

Authority of Department of Environmental Quality to require monitoring of industry waste waters, 75-5-602.

Waste and contamination of ground water prohibited, 85-2-505.

82-4-254. Violation — penalty — waiver. (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department shall be assessed a penalty of not less than $750 for each day, up to 30 days, during which the failure or violation continues. The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. By filing a written request within 20 days of receipt of the notice of violation, the person or operator is entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the department shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the director of environmental quality, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both.

History: En. Sec. 23, Ch. 325, L. 1973; R.C.M. 1947, 50-1056; amd. Sec. 17, Ch. 550, L. 1979; amd. Sec. 5, Ch. 437, L. 1981; amd. Sec. 1, Ch. 499, L. 1983; amd. Sec. 1, Ch. 24, L. 1985; amd. Sec. 1, Ch. 217, L. 1985; amd. Sec. 379, Ch. 418, L. 1995; amd. Sec. 294, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (4), in introductory clause, substituted "director of environmental quality" for "commissioner"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Knowingly defined, 1-1-204, 45-2-101.

Willfully defined, 1-1-204.

Contested administrative cases, Title 2, ch. 4, part 6.

Appeal of contested administrative cases, Title 2, ch. 4, part 7.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Criminal responsibilities of corporations, 45-2-311.

Place of imprisonment when none specified, 46-18-211.

Disposition of fines and forfeitures, 46-18-603, 82-4-241.

Person defined, 82-4-203.

Part 3
Metal Mine Reclamation

Part Cross-References

Reclamation, Art. IX, sec. 2, Mont. Const.

Prospecting permits and mining leases on state lands, Title 77, ch. 3, part 1.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-301. Legislative findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide:

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly

affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance (other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium) that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials or, except as provided in 82-4-310, that knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation; that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2) or a permit that meets the criteria of subsection (15)(c); and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(16) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(17) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the

mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(18) "Underground mining" means all methods of mining other than surface mining.

(19) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985; amd. Sec. 1, Ch. 93, L. 1989; amd. Sec. 1, Ch. 346, L. 1989; amd. Sec. 1, Ch. 347, L. 1989; amd. Sec. 1, Ch. 283, L. 1991; amd. Sec. 1, Ch. 637, L. 1991; amd. Sec. 4, Ch. 472, L. 1993; amd. Sec. 380, Ch. 418, L. 1995; amd. Sec. 1, Ch. 272, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 272 in definition of small miner, in (a) near middle after "waste materials", substituted "or, except as provided in 82-4-310, that knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation" for "that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate", after "82-4-335(2)" inserted "or a permit that meets the criteria of subsection (15)(c)", deleted (a)(i)(C) that read: "(C) not operated simultaneously except during seasonal transitional periods, not to exceed 30 days", inserted (b)(ii) requiring exclusion of access roads in computing mining area, and inserted (c) limiting area disturbance to 100 acres; inserted definition of soil materials; and made minor changes in style. Amendment effective April 16, 1997.

Applicability: Section 4(1), Ch. 272, L. 1997, provided: "[Section 1(15)] [amending the definition of small miner in 82-4-303] applies to operations conducted after [the effective date of this act]." Effective April 16, 1997.

82-4-304. Exemption — works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1979; amd. Sec. 2, Ch. 453, L. 1985; amd. Sec. 1, Ch. 204, L. 1995.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed $10,000 per operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent will be used or disposed of. The acreage disturbed by the cyanide ore-processing operation and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(15)(a)(i) and (ii).

(8) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

History: **En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985; amd. Sec. 2, Ch. 93, L. 1989; amd. Sec. 2, Ch. 346, L. 1989; amd. Sec. 2, Ch. 347, L. 1989; amd. Sec. 2, Ch. 637, L. 1991; amd. Sec. 1, Ch. 598, L. 1993; amd. Sec. 1, Ch. 329, L. 1995; amd. Sec. 2, Ch. 272, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 272 in (1)(d), after "small miner", inserted "shall salvage and protect all soil materials for use in reclamation of that site and";in (3), in first sentence after "state's", substituted "documented cost estimate" for "actual cost" and after "exceed" substituted "$10,000" for "$5,000"; in (7) inserted last sentence excluding disturbed acreage from the statutory 5-acre limit; and made minor changes in style. Amendment effective April 16, 1997.

Applicability: Section 4(2), Ch. 272, L. 1997, provided: "[Section 2(1)(d)] [amending 82-4-305(1)(d)] applies to lands initially disturbed after May 15, 1997." Section 4(3), Ch. 272, L. 1997, provided: "[Section 2(3)] [amending 82-4-305(3)] applies to operations for which a bond was not posted prior to May 15, 1997."

Cross-References

Mining and exploration activity prohibited if bond forfeited — exception, 82-4-360.

Penalty for violation of conditions of small-miner exemption, 82-4-361.

82-4-306. Confidentiality of application information. (1) Except as provided in subsections (2) and (3), the information obtained by the department from applications for exploration licenses and the information obtained from small miners is confidential between the department and the applicant, except for the name of the applicant and the county of proposed operation. However, all activities conducted subsequent to exploration and other associated facilities are public information and must be conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the department or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the department from exploration license applications and from small miners and that is related to the exploration or mining on state and federal lands when the information identifies the location of exploration and mining activities and describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to $1,000.

History: **En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221; amd. Sec. 193, Ch. 575, L. 1981; amd. Sec. 3, Ch. 637, L. 1991; amd. Sec. 381, Ch. 418, L. 1995.**

Cross-References

Right of privacy, Art II, sec. 10, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

Proof of official records, Rule 44, M.R.Civ.P. (see Title 25, ch. 20).

Admissibility of public records, Rule 803(8), M.R.Ev. (see Title 26, ch. 10).

Disposition of fines and forfeitures, 46-18-603, 82-4-311.

Administrative procedure, 82-4-353.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

82-4-308. Release by waiver. An applicant may release the department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2; amd. Sec. 382, Ch. 418, L. 1995.

82-4-309. Exemption — operations on federal lands. This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

Cross-References

Jurisdiction of state, Title 2, ch. 1, part 1.

State jurisdiction in federal enclaves, 2-1-201.

82-4-310. Exemption — scale and type of activity. (1) This part does not apply to a person engaged in mining activities if that person does not:

(a) use motorized excavating equipment;

(b) use blasting agents;

(c) disturb more than 100 square feet or 50 cubic yards of material per site;

(d) leave unreclaimed sites that are less than 1 mile apart;

(e) use a suction dredge with an intake of more than 4 inches in diameter; or

(f) operate a suction dredge beyond the area of the stream bed that is naturally under water at the time of operation.

(2) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1).

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224; amd. Sec. 3, Ch. 272, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 272 substituted (1) and (2) concerning activities to which part does not apply for former section that read: "This part shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year." Amendment effective April 16, 1997.

82-4-311. Hard-rock mining and reclamation account. All fees, fines, penalties, and other uncleared money that has been or will be paid to the department under the provisions of this part must be placed in the state special revenue fund in the state treasury and credited to a special account that is designated as the hard-rock mining and reclamation account. This account is available to the department by appropriation and may be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 383, Ch. 418, L. 1995.

Cross-References

No money expended except upon appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

Fiscal year defined, 17-2-110.

Reversion of unexpended appropriation, 17-7-304.

82-4-312 through 82-4-320 reserved.

82-4-321. Administration. The department is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204; amd. Sec. 384, Ch. 418, L. 1995.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

Board of Environmental Review created, 2-15-3502.

82-4-322. Investigations, research, and experiments. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205; amd. Sec. 385, Ch. 418, L. 1995.

82-4-323. Interagency cooperation — receipt and expenditure of funds. The department shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the department requests that they provide. The department may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206; amd. Sec. 386, Ch. 418, L. 1995.

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required — employees included — limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979; amd. Sec. 3, Ch. 93, L. 1989; amd. Sec. 2, Ch. 598, L. 1993; amd. Sec. 387, Ch. 418, L. 1995.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the department;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The board shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the

requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979; amd. Sec. 2, Ch. 137, L. 1991; amd. Sec. 388, Ch. 418, L. 1995.

Cross-References

Certificate of claim location to be filed, 82-2-102.

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(3), (4).

82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the department may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979; amd. Sec. 389, Ch. 418, L. 1995.

82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate

which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with

the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or

(9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985; amd. Sec. 1, Ch. 311, L. 1987; amd. Sec. 4, Ch. 93, L. 1989; amd. Sec. 3, Ch. 347, L. 1989; amd. Sec. 4, Ch. 227, L. 1991; amd. Sec. 1, Ch. 403, L. 1991; amd. Sec. 4, Ch. 637, L. 1991; amd. Sec. 3, Ch. 598, L. 1993; amd. Sec. 390, Ch. 418, L. 1995.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(3) Provision must be made to avoid accumulation of stagnant water in the mined area.

(4) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(5) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(6) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(7) The reclamation plan must provide for the reclamation of all disturbed land. Proposed reclamation must provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces that may not be feasible to reclaim in the same fashion as other disturbed lands. In the case of open pits and rock faces, the reclamation plan must provide for reclamation to a condition:

(a) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(b) that affords utility to humans and the surrounding natural system to the extent feasible; and

(c) that blends with the appearance of the surrounding area to the extent feasible.

(8) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(9) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the activities specified in this section.

(10) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985; amd. Sec. 391, Ch. 418, L. 1995; amd. Sec. 1, Ch. 464, L. 1995.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Denial of operating permit for failure of reclamation plan to comply with air quality, water quality, or public water treatment criteria, 82-4-351.

82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after

timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985; amd. Sec. 5, Ch. 637, L. 1991; amd. Sec. 5, Ch. 472, L. 1993; amd. Sec. 4, Ch. 598, L. 1993; (4) thru (7)En. Sec. 5, Ch. 598, L. 1993; amd. Sec. 2, Ch. 204, L. 1995; amd. Sec. 392, Ch. 418, L. 1995; amd. Sec. 295, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(c)(iii) substituted "82-4-341(7)" for "82-4-341(6)". Amendment effective March 12, 1997.

Cross-References

Contested administrative cases, Title 2, ch. 4, part 6.

82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the department. Regardless of the limits in this subsection, the bond may not be less than the estimated cost to the state to ensure compliance with this part, the rules, and the permit. A public or governmental agency may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates

that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(4) A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing.

(5) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded.

(6) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985; amd. Sec. 6, Ch. 637, L. 1991; amd. Sec. 6, Ch. 598, L. 1993; amd. Sec. 1, Ch. 395, L. 1995; amd. Sec. 393, Ch. 418, L. 1995.

Cross-References

Surety bonds and companies, Title 28, ch. 11, part 4; Title 33, ch. 26, part 1.

82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the department which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

(e) update the information required in 82-4-335(4)(a); and

(f) update any maps previously submitted or specifically requested by the department. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985; amd. Sec. 5, Ch. 227, L. 1991; amd. Sec. 7, Ch. 637, L. 1991; amd. Sec. 394, Ch. 418, L. 1995.

Cross-References

Hard-rock mining impact, Title 90, ch. 6, part 3.

82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed upon the operator by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3); amd. Sec. 6, Ch. 453, L. 1985; amd. Sec. 395, Ch. 418, L. 1995.

82-4-341. Compliance — reclamation by board. (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan. Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is

properly completed, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The board shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by order. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return any amount not expended.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213; amd. Sec. 3, Ch. 204, L. 1995; amd. Sec. 396, Ch. 418, L. 1995.

Cross-References

Public contracts generally, Title 18, ch. 1.

Extent of surety's liability, 28-11-411.

Mining and exploration activity prohibited if bond forfeited — exception, 82-4-360.

82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less; and

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance.

History: En. Sec. 3, Ch. 472, L. 1993; amd. Sec. 397, Ch. 418, L. 1995.

82-4-343 through 82-4-348 reserved.

82-4-349. Limitations of actions. Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made.

History: En. Sec. 1, Ch. 472, L. 1993; amd. Sec. 398, Ch. 418, L. 1995.

82-4-350. Award of costs and attorney fees. When issuing a final order in an action challenging the grant or denial of an exploration license or operating permit issued under this part, the court may award costs of litigation, including reasonable attorney and expert witness fees, to a prevailing or substantially prevailing party whenever, in its discretion, the court determines an award is appropriate.

History: **En. Sec. 2, Ch. 472, L. 1993.**

82-4-351. Reasons for denial of permit. (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

History: **En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979; amd. Sec. 7, Ch. 453, L. 1985; amd. Sec. 6, Ch. 472, L. 1993.**

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the department a new plan for reclamation.

History: **En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215; amd. Sec. 399, Ch. 418, L. 1995.**

82-4-353. Administrative remedies — notice — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: **En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-4-354. Mandamus to compel enforcement. (1) A person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the

court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform the duties. If the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) A person having an interest that is or may be adversely affected may commence a civil action to compel compliance with this part against a person for the violation of this part or any rule, order, or permit issued under it. However, an action may not be commenced:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it. A person having an interest that is or may be adversely affected may intervene as a matter of right in the civil action.

(4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district.

(5) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

History: En. Sec. 4, Ch. 345, L. 1985; amd. Sec. 1, Ch. 535, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 535 inserted (4) relating to the district in which the action must be brought; and made minor changes in style.

Cross-References

Mandamus — writ of mandate, Title 27, ch. 26.

82-4-355. Action for damages to water supply — replacement. (1) An owner of an interest in real property who obtains all or part of his supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335 to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until such time as the operator provides substitute water, except that nothing in this section preempts Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of his senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program, water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining.

History: En. Sec. 5, Ch. 345, L. 1985; amd. Sec. 8, Ch. 637, L. 1991.

Cross-References

Waste and contamination of ground water prohibited, 85-2-505.

82-4-356. Action in response to complaints related to use of explosives. (1) An owner of an interest in real property or an individual who resides within an area subject to property damage or safety hazards related to the use of explosives by any person subject to the provisions of this part may file a complaint with the department, describing the alleged property damage or safety hazards. The complainant shall provide credible evidence to the department to substantiate allegations of property damage or safety hazards.

(2) Upon receipt of a complaint, the department:

(a) shall investigate the statements and charges in the complaint, using all available information, including mine or exploration blasting records and other data obtained through an examination of the dwelling, structure, or site identified in the complaint;

(b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that may have caused property damage or safety hazards, and may require the allegedly responsible person to cooperate as necessary to investigate the complaint;

(c) shall issue a written finding specifying the cause of any property damage or safety hazards that are validated by the investigation; and

(d) shall, if it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by exploration or mining activities, order the responsible person to make changes in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards.

History: En. Sec. 1, Ch. 443, L. 1989.

Cross-References

Reckless or malicious use of explosives, 45-8-333.

Seismic geophysical exploration, Title 82, ch. 1, part 1.

Proof of insurance covering use of explosives in strip- or underground-coal-mining and reclamation operations required, 82-4-222.

Regulation of use of explosives in reclamation, 82-4-231.

82-4-357. Abatement of environmental emergencies. (1) Whenever an environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or permanently abandoned exploration, mining, ore processing, or hard-rock mill site, the department may enter the site and may apply for and, if approved by the governor, use the funds in the environmental contingency account created in 75-1-1101 to abate the situation on either a temporary or a permanent basis, or both.

(2) The department may bring an action against the operator to recover the abatement costs in the district court of the first judicial district in Lewis and Clark County. Nothing in this section affects the right of the department to retain or pursue forfeiture of any bond posted pursuant to 82-4-338. Expenditures from the environmental contingency account that are recovered under this subsection must be deposited in the environmental contingency account.

History: En. Sec. 9, Ch. 637, L. 1991.

Cross-References

Environmental contingency account objectives, 75-1-1101.

82-4-358 and 82-4-359 reserved.

82-4-360. Activity prohibited if bond forfeited — exception. (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part.

(2) A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:

(a) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;

(b) the full amount of any penalties assessed under this part; and

(c) interest on these amounts and penalties incurred at the rate of 6% per year.

History: En. Sec. 7, Ch. 93, L. 1989; amd. Sec. 400, Ch. 418, L. 1995; amd. Sec. 296, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2)(a) substituted "82-4-341(6)" for "82-4-341(5)". Amendment effective March 12, 1997.

82-4-361. Violation — penalties — waiver. (1) (a) The department may assess an administrative civil penalty of not less than $100 or more than $1,000 for each of the following violations and an additional administrative civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation.

(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

(3) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing or after the time for requesting a hearing has expired, the department shall make findings of fact and issue a written decision as to the occurrence of the violation and whether the amount of penalty is warranted. The department shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department.

(5) Legal actions for injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222; amd. Sec. 1, Ch. 284, L. 1985; amd. Sec. 3, Ch. 386, L. 1985; amd. Sec. 5, Ch. 93, L. 1989; amd. Sec. 2, Ch. 283, L. 1991; amd. Sec. 4, Ch. 204, L. 1995; amd. Sec. 1, Ch. 271, L. 1997; amd. Sec. 4, Ch. 273, L. 1997; amd. Sec. 2, Ch. 535, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 271 in (1)(a), at beginning, substituted "The department may assess an administrative" for "Except as provided in subsections (1)(b) and (2), a", after "additional" inserted "administrative", near end, after "continues and", inserted "may bring an action for", and after "violation" deleted "may be imposed"; inserted (2) setting out factors to be considered prior to instituting a civil penalty action; deleted (2)(b) that read: "(b) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection"; and made minor changes in style.

Chapter 273 in (4), in fourth and fifth sentences, substituted "department" for "board". Amendment effective April 16, 1997.

Chapter 535 inserted (5) relating to the district in which actions must be brought.

Applicability: Section 3, Ch. 271, L. 1997, provided: "[This act] applies to proceedings begun on or after [the effective date of this act]." Effective April 16, 1997.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Criminal responsibility of corporations, 45-2-311.

Disposition of fines and penalties, 46-18-603, 82-4-311.

Person defined, 82-4-303.

Small-miner exemption, 82-4-305.

82-4-362. Suspension of permits — hearing. (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the director shall order the suspension of the permit. The permit may be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a permit whenever the director makes a finding that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, or the permit and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set in the notice or order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225; amd. Sec. 2, Ch. 284, L. 1985; amd. Sec. 6, Ch. 93, L. 1989; amd. Sec. 3, Ch. 283, L. 1991; amd. Sec. 7, Ch. 598, L. 1993; amd. Sec. 5, Ch. 204, L. 1995; amd. Sec. 401, Ch. 418, L. 1995.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

82-4-363 through 82-4-370 reserved.

82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: **En. Sec. 2, Ch. 329, L. 1995.**

Cross-References

Fees of County Clerk, 7-4-2631.

Injunctions, Title 27, ch. 19.

82-4-372. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien,

whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.

Cross-References

Liens — generally, Title 71, ch. 3, part 1.

Part 4

Opencut Mining Reclamation

Part Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-401. Short title. This part shall be known and may be cited as "The Opencut Mining Act".

History: En. Sec. 1, Ch. 326, L. 1973; R.C.M. 1947, 50-1501.

82-4-402. Policy. It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut mineral mining. Therefore, it is the purpose of this part to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by opencut mineral mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974; R.C.M. 1947, 50-1502; amd. Sec. 1, Ch. 280, L. 1987.

82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or mineral is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the mineral, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and mineral stockpile areas on or contiguous to the opencut mine.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Final cut" means the last pit created in an opencut-mined area.

(6) "Landowner" means the owner of land directly affected by an opencut-mining operation.

(7) "Minerals" means bentonite, clay, scoria, phosphate rock, sand, or gravel.

(8) "Opencut mining" means the mining of minerals by:

(a) removing the overburden lying upon natural deposits of minerals and mining directly from the exposed natural deposits;

(b) mining directly from natural deposits of minerals; or

(c) removing overburden for the purpose of determining the location, quality, or quantity of any natural deposit of minerals.

(9) "Operator" means a person engaged in or controlling an opencut-mining operation.

(10) "Overburden" means all of the earth and other materials that lie above a natural deposit of minerals.

(11) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(12) "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

(13) "Progress report" means a report showing the land that the operator has affected by opencut mining during the year. The report must show the number of acres of affected land and all reclamation accomplished.

(14) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice must be given once a week for 3 successive weeks.

(15) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(16) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas and an explanation of proposed reclamation of the land, including appropriate maps.

(17) "Refuse" means all waste material directly connected with the opencut-mining operations.

(18) "Soils materials" are those horizons that contain topsoil or other soils leached free of deleterious salts, that are capable of sustaining plant growth, and that are recognized as such by standard authorities.

(19) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining.

History: En. Sec. 4, Ch. 326, L. 1973; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977; R.C.M. 1947, 50-1504; amd. Sec. 2, Ch. 280, L. 1987; amd. Sec. 402, Ch. 418, L. 1995.

82-4-404. Exemption — operations covered by metal mine reclamation. Nothing in this part may be construed to be applicable to mining or exploration operations which are regulated under the provisions of part 3 of this chapter.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-405. Inapplicability to state and local government. The provisions of this part relating to fees or bonds do not apply to the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.1.

82-4-406. Exemption — operations on federal lands. This part is not applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering the land impose controls for reclamation of those lands equal to or greater than those imposed by this part.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977; R.C.M. 1947, 50-1517.

Cross-References

Sovereignty and jurisdiction of state, 2-1-102.

Jurisdiction over federal enclaves, 2-1-201.

82-4-407 through 82-4-420 reserved.

82-4-421. Administration — delegation of functions. The department is the administrator of this part, and it has all the power necessary to implement and enforce it.

History: En. Sec. 5, Ch. 326, L. 1973; amd. Sec. 18, Ch. 39, L. 1977; R.C.M. 1947, 50-1505; amd. Sec. 403, Ch. 418, L. 1995.

82-4-422. Powers, duties, and functions. (1) The department has the following powers, duties, and functions to:

(a) enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

(b) conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

(c) reclaim any affected land with respect to which a bond has been forfeited; and

(d) make investigations or inspections which are considered necessary to insure compliance with any provision of this part.

(2) The board shall adopt rules:

(a) that pertain to opencut mining in order to accomplish the purposes of this part; and

(b) establishing uniform procedures for filing of necessary records, for the issuance of contracts, and for any other matters of administration not specifically enumerated in this part.

History: **En. Sec. 6, Ch. 326, L. 1973; amd. Sec. 19, Ch. 39, L. 1977; R.C.M. 1947, 50-1506; amd. Sec. 404, Ch. 418, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested cases, Title 2, ch. 4, part 6.

Public contracts generally, Title 18, ch. 1.

82-4-423. Contracts for reclamation. The department is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of minerals has been or is to be conducted. The department is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and the department shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: **En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977; R.C.M. 1947, 50-1503; amd. Sec. 3, Ch. 280, L. 1987; amd. Sec. 405, Ch. 418, L. 1995.**

Cross-References

Public contracts generally, Title 18, ch. 1.

82-4-424. Receipt and expenditure of funds. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) Any funds of any public works programs available to the department must be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part.

(3) There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money that have been or will be paid under the provisions of this part. The money in the account is available to the department through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

History: En. Sec. 11, Ch. 326, L. 1973; amd. Sec. 24, Ch. 39, L. 1977; R.C.M. 1947, 50-1511; amd. Sec. 1, Ch. 431, L. 1991; amd. Sec. 406, Ch. 418, L. 1995.

Cross-References

Powers of soil conservation district, 76-15-403.

82-4-425. Inspection of opencut mining. The department or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977; R.C.M. 1947, 50-1512; amd. Sec. 407, Ch. 418, L. 1995.

82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the department may reclaim any affected lands with respect to which a bond has been forfeited. If the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the state general fund.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977; R.C.M. 1947, 50-1514; amd. Sec. 408, Ch. 418, L. 1995; amd. Sec. 72, Ch. 509, L. 1995.

82-4-427. Hearing. (1) A person who is aggrieved by a final decision of the department is entitled to a hearing.

(2) The Montana Administrative Procedure Act governs hearings before the department and judicial review of decisions of the board under this part.

History: En. Sec. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977; R.C.M. 1947, 50-1515; amd. Sec. 409, Ch. 418, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-4-428 through 82-4-430 reserved.

82-4-431. Contract for reclamation required. (1) An operator may not conduct opencut-mining operations that will result in the removal of 10,000 cubic yards or more of product or overburden or that will result in the disturbance of land that was previously reclaimed pursuant to this part until the operator has entered into a contract with the department for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department prior to beginning operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season, replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;

(b) in the bottom or head of a confined drainage;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

(4) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2.

History: En. Sec. 7, Ch. 326, L. 1973; amd. Sec. 20, Ch. 39, L. 1977; R.C.M. 1947, 50-1507; amd. Sec. 4, Ch. 280, L. 1987; amd. Sec. 3, Ch. 408, L. 1991; amd. Sec. 2, Ch. 431, L. 1991; amd. Sec. 410, Ch. 418, L. 1995.

Cross-References

Public contracts generally, Title 18, ch. 1.

82-4-432. Application for contract — contents — issuance — amendment. (1) Applications for a contract must be made upon a form furnished by the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the department of the intention to submit a plan and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the department may issue a contract to the applicant which entitles the applicant to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have a contract amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the department thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508; amd. Sec. 4, Ch. 408, L. 1991; amd. Sec. 411, Ch. 418, L. 1995.

82-4-433. Bond. (1) A bond required to be filed in this part by the operator shall be in such form as the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than $200 or more than $1,000 per acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 per acre. Upon such a determination, the bond amount must be set by the department at the cost of restoring the land.

(2) In lieu of the bond, the operator may deposit with the board cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as

provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual affected land and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977; R.C.M. 1947, 50-1509; amd. Sec. 1, Ch. 138, L. 1983; amd. Sec. 5, Ch. 280, L. 1987; amd. Sec. 3, Ch. 431, L. 1991; amd. Sec. 412, Ch. 418, L. 1995.

Cross-References

Surety bonds and companies, Title 28, ch. 11, part 4; Title 33, ch. 26, part 1.

82-4-434. Reclamation plan part of contract — requirements. The contract must meet the following requirements:

(1) The operator shall submit a reclamation plan to the department before commencing any opencut mining and may not commence mining before the plan receives approval from the department. The operator may request and receive a meeting with the department prior to submission of the plan. If the department does not notify the operator that it has approved or disapproved a plan within 30 days after the department has received the plan, the department is considered to have approved the plan. The department, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The department shall submit each reclamation plan or amendments to the reclamation plan to the landowner for recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The department may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana-Missoula statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The department may approve a reclamation plan only if the department has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the department, it must become a part of the contract but is subject to annual review and modification by the department.

(2) The department may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, and habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, the material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the department;

(i) that all operations will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time; and

(n) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation.

(3) If reclamation according to the plan has not been completed in the time specified, the department after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation, the operator may for good reason submit to the department a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The department may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 per acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the department are a public record and are open to inspection.

(7) The contract is effective when signed by the department and the operator and remains in force until terminated by mutual consent or by the department upon 6 months' notice.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510; amd. Sec. 6, Ch. 280, L. 1987; amd. Sec. 58, Ch. 16, L. 1991; amd. Sec. 413, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Breach of contract, 27-1-311.
Injunctions, Title 27, ch. 19.
Water quality control, Title 75, ch. 5.
Appropriation permit required for reservoir, 85-2-305.

82-4-435. Repealed. Sec. 2, Ch. 113, L. 1981.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977; R.C.M. 1947, 50-1513.

82-4-436 through 82-4-440 reserved.

82-4-441. Penalty — enforcement. (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a contract for reclamation:

(a) a civil penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation.

(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

(3) The department shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the department shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located.

History: En. Sec. 1, Ch. 113, L. 1981; amd. Sec. 7, Ch. 280, L. 1987; amd. Sec. 4, Ch. 431, L. 1991; amd. Sec. 414, Ch. 418, L. 1995; amd. Sec. 2, Ch. 271, L. 1997; amd. Sec. 5, Ch. 273, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 271 in (1), at beginning, inserted "The department may assess against"; in (1)(a) and (1)(b), at beginning, deleted "shall pay"; deleted (1)(c) that read: "(c) may be enjoined from continuing the violation as provided in this section"; substituted (2) setting out factors to be considered prior to instituting a civil penalty action for former (2) that read: "The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection"; and made minor changes in style. Amendment effective April 16, 1997.

Chapter 273 in (3), near middle of fourth sentence, substituted "department" for "board". Amendment effective April 16, 1997.

Applicability: Section 3, Ch. 271, L. 1997, provided: "[This act] applies to proceedings begun on or after [the effective date of this act]." Effective April 16, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Injunctions, Title 27, ch. 19.

82-4-442 through 82-4-444 reserved.

82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: En. Sec. 2, Ch. 329, L. 1995.

Cross-References

Fees of County Clerk, 7-4-2631.

Injunctions, Title 27, ch. 19.

82-4-446. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the

district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.

Cross-References

Fees of County Clerk, 7-4-2631.

Tax lien on real property, 15-16-403.

Liens — generally, Title 71, ch. 3, part 1.

CHAPTERS 5 THROUGH 9

RESERVED

CHAPTER 10

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Chapter Cross-References

Powers of cities and towns to acquire natural gas and distributing systems, 7-13-4102.

Depletion allowance — state tax, 15-31-114.

Oil and gas severance tax, Title 15, ch. 36.

Mining and oil companies — fraudulent handling of finances, Title 30, ch. 14, part 7.

Real estate license law not to apply to persons performing any act with respect to prospecting, mining, or drilling, 37-51-103.

Regulation of pipeline carriers of oil, Title 69, ch. 13.

Eminent domain — appropriation of underground natural gas reservoir — effect on landowner's right to drill, 70-30-105.

Labor and material liens on oil and gas wells and pipelines, Title 71, ch. 3, part 10.

Montana Major Facility Siting Act, Title 75, ch. 20.

State lands — oil and gas, Title 77, ch. 3, part 4.

Underground storage of natural gas, Title 77, ch. 3, part 5.

Cancellation and forfeiture of oil and gas leases, Title 82, ch. 1, part 2.

Trusts for unlocatable mineral owners, Title 82, ch. 1, part 3.

Part 1
Royalty Interests

82-10-101. Action for accounting for royalty. (1) Whenever an owner of a royalty interest in or attaching to lands producing natural gas, oil, or other minerals or in or to the natural gas, oil, or other mineral production from said lands, whether said royalty is payable in kind out of the product of the lands or out of the money proceeds from the sale of the product of said lands, shall make a written demand upon the person or persons obligated to deliver or pay such royalty for an accounting of the natural gas, oil, or other minerals produced from said lands and makes written demand for delivery or payment of such owner's royalty as may then be due and the person or persons obligated for the delivery or payment of said royalty fail to make the accounting demanded and the payment or delivery of the royalty due within a period of 60 days following the date upon which said demand is made, then the owner of said royalty may file an action in the district court of the county wherein said lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated as aforesaid.

(2) In said action the successful party or parties recovering judgment against the person or persons obligated shall, in addition to relief by way of accounting and recovery of the royalty due as hereinabove provided, also recover judgment for a sum of money by way of reasonable attorney's fees to be allowed by the court together with the costs allowed to successful parties by law in actions generally in said court.

(3) Whenever the same person or persons is or are obligated for delivery or payment of said royalty to separate owners of royalty in or to a tract of land or any portion of said land or the product of the whole or any part of said land, then any number of said owners of royalty may join their separate causes of action as parties plaintiff in the action herein provided for, and in their complaint filed in said action, each cause of action of each of the several plaintiffs shall be set forth separately in said complaint, and the judgment given, made, and rendered upon said complaint shall adjudge the relief to one or more of the plaintiffs and deny relief to any one or more of said plaintiffs accordingly as the evidence may establish.

(4) If the defendant or defendants prevail in said action against any one or more of said plaintiffs, the court shall adjudge and allow to such defendant or defendants and against the unsuccessful plaintiff or plaintiffs recovery of a sum of money as reasonable attorney's fees to be allowed by the court and adjudge and allow costs to said defendant to be recovered from the said unsuccessful plaintiff or plaintiffs in said action, as provided for by law in actions generally in said court.

History: **En. Sec. 1, Ch. 78, L. 1943; R.C.M. 1947, 60-501.**

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Joinder of claims, Rule 18, M.R.Civ.P. (see Title 25, ch. 20).

Joinder of parties, Rules 19 and 20, M.R.Civ.P. (see Title 25, ch. 20).

82-10-102. Remedy not exclusive. The remedy provided for in 82-10-101 is in the nature of a special remedy additional to and not a substitute for other remedies given by law to owners of royalties in lands of the character specified, and all acts or parts of acts in conflict with the provisions of 82-10-101 shall not apply in actions authorized and provided for by that section.

History: **En. Sec. 2, Ch. 78, L. 1943; R.C.M. 1947, 60-502; amd. Sec. 2, Ch. 500, L. 1983; amd. Sec. 3, Ch. 582, L. 1983.**

82-10-103. Obligation to pay royalties as essence of contract — interest. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or his assignee, to deliver oil or gas to a purchaser to the credit of such royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such oil or gas to the royalty owner or his assignee is of the essence in the lease contract.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or his assignee within 120 days after the initial oil or gas

produced under the lease is marketed and within 60 days for all oil and 90 days for all gas produced and marketed thereafter, the unpaid royalties will bear interest, at the maximum rate of interest authorized under 31-1-107 from the date due until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than $50 and annually whenever the aggregate amount is less than $10.

(3) A royalty owner seeking a remedy for failure to make payments under the lease or seeking such payments under this section shall bring his action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any such actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover his court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or his assignee has elected to take his proportionate share of production in kind or whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

History: En. Sec. 1, Ch. 500, L. 1983; amd. Sec. 1, Ch. 118, L. 1985.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

82-10-104. Payment of royalties — form of record required. (1) An oil and gas producer paying royalties by check, draft, or order shall include with every such payment a form showing the following matters relating to that payment:

(a) the name of the royalty owner to whom the payment is made;

(b) the date of the check, draft, or order;

(c) any royalty owner identification number used by the producer for such royalty owner;

(d) the month and year during which production occurred for which payment is being made;

(e) any number used to identify the lease under which production occurred;

(f) the type of product produced;

(g) barrels of oil and/or cubic feet of gas for which payment is made;

(h) the amount and type of all taxes withheld;

(i) the net value of production; and

(j) the royalty owner's net value.

(2) Any person purposely and knowingly violating the provisions of subsection (1) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000.

History: En. Sec. 1, Ch. 582, L. 1983.

Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

82-10-105 through 82-10-109 reserved.

82-10-110. Division order — definition — effect. (1) As used in this section, the term "division order" is limited to mean an instrument executed by the lessor of an oil or gas lease to authorize the sale of and direct the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons.

(2) A division order may not alter or amend the terms of the underlying oil or gas lease. A division order does not relieve a lessee of any liabilities or obligations under the terms of the underlying oil or gas lease.

(3) A division order must be in writing and:

(a) must warrant the division of interest;

(b) must contain the name, address, and tax identification number of each interest owner to whom disbursements are made by the holder of the proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons;

(c) must contain a provision requiring notice of change of ownership; and

(d) may contain any other terms that are necessary to facilitate the transaction.

History: En. Sec. 1, Ch. 607, L. 1993.

Part 2

Lease of Local Government Land

Part Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

Lease of state land, Title 77, ch. 3, part 4.

82-10-201. Authorization for lease and terms — land not subject to leasing. The governing body of any county, city, town, school district, or incorporated political subdivision within the state of Montana may, if in the best interests of the county, city, town, school district, or incorporated political subdivision, lease any real property owned by the county, city, town, school district, or incorporated political subdivision for oil and gas development purposes. Such leases shall be made upon the best terms obtainable, shall provide for such terms, except as hereinafter provided, as the governing body shall consider to be for the best interests of the county, city, town, school district, or incorporated political subdivision, shall reserve a royalty of not less than 12 ½% which shall include any royalty payable to any person other than the lessor, and shall be for a period not exceeding 10 years and so long thereafter as oil, gas, or other hydrocarbons shall be produced from the premises embraced in the lease. However, nothing contained herein shall authorize the leasing of lands acquired by a county by tax deed except under the provisions of Title 7, chapter 8, part 25.

History: En. Sec. 1, Ch. 131, L. 1953; R.C.M. 1947, 60-701; amd. Sec. 6, Ch. 201, L. 1979.

Cross-References

Reservation of mineral royalty by county, 7-8-2305.

Management of county lands, Title 7, ch. 8, part 25.

"School district" to include community college district, 20-15-403.

Actions arising from seizure or sale of property for taxes, 27-2-210.

Oil and gas leases authorized on state lands, 77-3-401.

82-10-202. Acreage pooling. When deemed in the best interests of the county, city, town, school district, or incorporated political subdivision, the governing body may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on an acreage or other equitable basis and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county, city, town, school district, or incorporated political subdivision from the percentages as fixed in its leases.

History: En. Sec. 2, Ch. 131, L. 1953; R.C.M. 1947, 60-702.

Cross-References

"School district" to include community college district, 20-15-403.

Pooling of interest within spacing unit, 82-11-202.

82-10-203. Interference with normal use of land prohibited. In the event such real property is held or used for a specific purpose, any lease made under the provisions of this part shall contain such protective provisions as may be necessary to prevent any interference by the lessee with the normal use of such real property for such purpose by the county, city, town, school district, or incorporated political subdivision.

History: En. Sec. 3, Ch. 131, L. 1953; R.C.M. 1947, 60-703.

Cross-References

"School district" to include community college district, 20-15-403.

82-10-204. Lease of acquired oil and gas interests. When in any deed or contract for sale a county has reserved or excepted an interest in oil and gas in and under any land acquired by tax deed, the board of county commissioners may lease such interest for oil and gas development purposes upon the same terms and conditions as are provided for the leasing of lands which have been acquired by tax deed, offered for sale and not sold or may ratify, confirm, and adopt any then-existing mineral or oil and gas lease insofar as it describes such land. All such leases, ratifications, confirmations, and adoptions heretofore executed by the board of county commissioners are declared to be valid and are ratified, approved, and confirmed.

History: En. Sec. 1, Ch. 155, L. 1957; R.C.M. 1947, 60-704.

Cross-References

Reservation of royalty in tax deed lands, 7-8-2305.

Alternative management of county lands, 7-8-2502.

Actions arising from seizure or sale of property for taxes, 27-2-210.

Part 3

Underground Gas Storage Reservoirs

Part Cross-References

Underground natural gas reservoir — appropriation by eminent domain, 70-30-104, 70-30-203.

Underground natural gas reservoir — preliminary condemnation order, 70-30-206.

Underground storage of natural gas on state land, Title 77, ch. 3, part 5.

82-10-301. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Native gas" means gas which has not been previously withdrawn from the earth.

(3) "Natural gas" means gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel.

(4) "Natural gas public utility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(5) "Underground reservoir" means any subsurface sand, stratum, or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

(6) "Underground storage" means the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.

History: En. Sec. 1, Ch. 259, L. 1955; amd. Sec. 83, Ch. 253, L. 1974; R.C.M. 1947, 60-801.

Cross-References

Underground natural gas reservoir — estates subject to eminent domain, 70-30-104.

82-10-302. Policy. (1) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial, and industrial consumers of this state, or which provides a better year-round market to the various gas fields serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided, the board and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

History: En. Sec. 2, Ch. 259, L. 1955; amd. Sec. 84, Ch. 253, L. 1974; R.C.M. 1947, 60-802.

82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility may acquire through the exercise of the right of eminent domain as provided in this part for its use for the underground storage of natural gas an underground reservoir which the board finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir, the utility may acquire such other interests in property as may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) No sand, formation, or stratum which is producing or has produced or which is capable of producing oil is subject to appropriation under this section.

(b) No gas-bearing sand, formation, or stratum is subject to appropriation under this section, unless the recoverable volumes of native gas therein have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its acquisition, if the operator was at that time entitled to the whole thereof or if the operator was at that time entitled to less than the whole thereof, then not to exceed the quantity thereof to which the operator was then entitled.

(c) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same are subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section shall be without prejudice to the rights of the owner of the lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with those rules or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

History: **En. Sec. 3, Ch. 259, L. 1955; amd. Sec. 85, Ch. 253, L. 1974; R.C.M. 1947, 60-803.**

Cross-References

Eminent domain generally, Title 70, ch. 30, 31.

82-10-304. Certificate of board required prior to use of eminent domain. (1) A natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the board a certificate setting out the findings of the board:

(a) that the underground sand, stratum, or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;

(b) the amount of native gas, if any, remaining therein and the portion thereof recoverable; and

(c) that the applicant has in good faith sought to acquire the rights sought under this part.

(2) The board may not issue the certificate until after a public hearing is had on the application, pursuant to notice given to all persons known to have

an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.

History: En. Sec. 4, Ch. 259, L. 1955; amd. Sec. 86, Ch. 253, L. 1974; R.C.M. 1947, 60-804.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

Contents of complaint for eminent domain, 70-30-203.

82-10-305. Proceedings. Having first obtained a certificate from the board, a natural gas public utility desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided in this section. The natural gas public utility shall present to the district court of the county wherein the land is situated a complaint setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners thereof as shown by the records of the county. The plaintiff shall file the certificate of the board as a part of its complaint, and no order by the court granting the complaint shall be entered without the certificate being filed therewith. Subsequent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, Title 70, chapters 30 and 31.

History: En. Sec. 5, Ch. 259, L. 1955; amd. Sec. 87, Ch. 253, L. 1974; R.C.M. 1947, 60-805.

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

Regulation of public utilities, Title 69, ch. 3.

Eminent domain procedure — contents of complaint, 70-30-203.

Part 4

Abandoned Oil and Gas Wells — Reclamation

82-10-401. Notice required before abandonment of well — owner's option. No person shall plug and abandon an oil or gas well located within this state without first giving reasonable notice of his intention to do so to the surface owner of record of the land on which said well is located. Upon receipt of notice to plug and abandon, the surface owner may, by written notice given within 15 days thereafter, direct that the well pipe for said well shall be buried to a depth of not less than 3 feet. The board of oil and gas conservation shall adopt regulations to implement this section.

History: En. 60-901 by Sec. 1, Ch. 161, L. 1974; R.C.M. 1974, 60-901.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Geophysical exploration — surety bond — restoration of surface, 82-1-104.

82-10-402. Inventory of abandoned wells and seismic operations — reclamation procedures. (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person so listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by his abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim the disturbed land with funds available from the oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects.

History: En. 60-149 by Sec. 3, Ch. 260, L. 1974; R.C.M. 1947, 60-149; amd. Sec. 3, Ch. 530, L. 1989.

Cross-References

Seismographic permit required, 82-1-105.

Part 5

Surface Owner Damage and Disruption Compensation

82-10-501. Purpose — legislative findings. (1) The purpose of this part is to provide for the protection of surface owners of land underlaid with oil and gas reserves while allowing for the necessary development of those reserves.

(2) To carry out the purpose described in subsection (1), the legislature finds that:

(a) it is necessary to protect the economic well-being of individuals engaged in agricultural production;

(b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with the use, agricultural or otherwise, of the surface of certain land; and

(c) owners of the surface estate should be justly compensated for use of their property and interference with the use of their property due to oil and gas development.

History: En. Sec. 1, Ch. 199, L. 1981.

Cross-References

Availability of remedies, Title 27, ch. 1.

82-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

(2) "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

(3) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

(4) "Oil and gas operations" means the exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to June 1, 1981, and the production operations directly related to the exploration or drilling.

(5) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

History: En. Sec. 2, Ch. 199, L. 1981.

82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice shall be given no more than 90 days and no fewer than 10 days before commencement of any activity on the land surface.

History: En. Sec. 3, Ch. 199, L. 1981; amd. Sec. 27, Ch. 526, L. 1983; amd. Sec. 1, Ch. 497, L. 1985.

Cross-References

Notice of intention to explore, 82-1-103.

Notice of intention to drill or conduct seismic operations, 82-11-122.

82-10-504. Surface damage and disruption payments — penalty for late payment. (1) (a) The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration shall be given to the period of time during which the loss occurs.

(c) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner shall be compensated by a single sum payment for harm caused by exploration only.

(d) The payments contemplated by this subsection (1) may only cover land directly affected by drilling operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption; no person may reserve or assign that compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.

History: **En. Sec. 4, Ch. 199, L. 1981; amd. Sec. 2, Ch. 497, L. 1985; (2)En. Sec. 3, Ch. 497, L. 1985.**

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

Geophysical exploration, Title 82, ch. 1, part 1.

82-10-505. Liability for damages to property. The oil and gas developer or operator is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to property, real or personal, caused by drilling operations and production.

History: **En. Sec. 5, Ch. 199, L. 1981.**

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

82-10-506. Notification of injury. To receive compensation under this part, a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable man.

History: **En. Sec. 6, Ch. 199, L. 1981.**

82-10-507. Agreement — offer of settlement. Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to 82-10-506, he shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer.

History: **En. Sec. 7, Ch. 199, L. 1981.**

82-10-508. Rejection — legal action. If the person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained.

History: **En. Sec. 8, Ch. 199, L. 1981.**

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

82-10-509 and 82-10-510 reserved.

82-10-511. Remedies cumulative. The remedies provided by this part do not preclude any person from seeking other remedies allowed by law.

History: **En. Sec. 9, Ch. 199, L. 1981.**

Cross-References

Availability of remedies, Title 27, ch. 1.

CHAPTER 11

OIL AND GAS CONSERVATION

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Chapter Cross-References

Board of Oil and Gas Conservation, 2-15-3303.

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Duties of Board of Oil and Gas Conservation relating to underground natural gas reservoir appropriations, 70-30-203, 70-30-206.

Production of water from oil and gas wells, 85-2-510.

Part 1
Regulation by Board of Oil and Gas Conservation

82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term

includes all persons holding that authority by or through the person with the right to drill.

(10) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

(11) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(12) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(13) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(14) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

(15) "State waters" means any body of water, either surface or underground.

(16) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)

(b) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of this definition.

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977; R.C.M. 1947, 60-126(part); amd. Sec. 1, Ch. 19, L. 1979; amd. Sec. 5, Ch. 239, L. 1983; amd. Sec. 1, Ch. 503, L. 1987; amd. Sec. 10, Ch. 530, L. 1989; amd. Sec. 1, Ch. 734, L. 1991; amd. Sec. 3, Ch. 379, L. 1993.

82-11-102. Oil or gas wells not public utilities. Nothing in this chapter shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

History: En. Sec. 20, Ch. 238, L. 1953; amd. Sec. 79, Ch. 253, L. 1974; R.C.M. 1947, 60-143.

82-11-103. Lands subject to law. This chapter applies to all lands in the state lawfully subject to its police powers, including all state-owned lands. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to the extent that any officer of the United States having jurisdiction or his duly authorized representative approves any of the provisions of this chapter or an order of the board that affects those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements. The suspension does not relieve an operator or owner from making reports that may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this chapter.

History: En. Sec. 17, Ch. 238, L. 1953; amd. Sec. 76, Ch. 253, L. 1974; R.C.M. 1947, 60-140; amd. Sec. 2, Ch. 734, L. 1991.

Cross-References

Sovereignty and jurisdiction of state, 2-1-102.

Jurisdiction over federal enclaves, 2-1-202.

82-11-104. Construction — no conflict with board of land commissioners' authority. No provision of this chapter may be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others, provided that state lands are subject to the provisions of this chapter concerning spacing and statutory pooling and unitization in the absence of voluntary pooling and unitization agreements.

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977; R.C.M. 1947, 60-126(part); amd. Sec. 3, Ch. 734, L. 1991.

82-11-105 through 82-11-110 reserved.

82-11-111. Powers and duties of board. (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells, consistent with rules made by it;

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids which the operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located, or if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, the person does not have sufficient financial resources to correct the problems.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part); amd. Sec. 4, Ch. 93, L. 1983; amd. Sec. 2, Ch. 503, L. 1987; amd. Sec. 4, Ch. 530, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative procedure, 82-11-141.

Jurisdiction of Board over water produced from oil and gas wells, 85-2-510.

82-11-112. Intergovernmental cooperation. The board may cooperate with any other state, interstate, or federal agency and other governmental agencies of the state to effect the objects and purposes of this chapter and expend such funds as may be reasonably necessary in connection therewith.

History: En. Sec. 18, Ch. 238, L. 1953; amd. Sec. 77, Ch. 253, L. 1974; R.C.M. 1947, 60-141.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

82-11-113 through 82-11-116. Repealed. Sec. 8, Ch. 34, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

82-11-113.	En. Sec. 2, Ch. 19, L. 1979.
82-11-114.	En. Sec. 3, Ch. 19, L. 1979.
82-11-115.	En. Sec. 4, Ch. 19, L. 1979.
82-11-116.	En. Sec. 5, Ch. 19, L. 1979.

82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department must be served in any such action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

(5) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section.

History: En. Sec. 3, Ch. 503, L. 1987.

82-11-118. Fees for processing applications. (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-36-303. The fee must be paid by the owner or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application.

History: En. Sec. 20, Ch. 9, Sp. L. November 1993; amd. Sec. 47, Ch. 451, L. 1995.

82-11-119 and 82-11-120 reserved.

82-11-121. Oil and gas waste prohibited. Waste of oil and gas or either of them as waste is defined in this chapter is prohibited.

History: En. Sec. 1, Ch. 238, L. 1953; Sec. 60-124, R.C.M. 1947; amd. and redes. 60-127.1 by Sec. 54, Ch. 253, L. 1974; R.C.M. 1947, 60-127.1.

82-11-122. Notice of intention to drill or conduct seismic operations — notice to surface owner. It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

History: En. Sec. 5, Ch. 238, L. 1953; amd. Sec. 57, Ch. 253, L. 1974; amd. Sec. 2, Ch. 260, L. 1974; R.C.M. 1947, 60-128; amd. Sec. 5, Ch. 339, L. 1985; amd. Sec. 4, Ch. 497, L. 1985.

Cross-References

Geophysical exploration, Title 82, ch. 1, part 1.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

Surface owner damage and disruption compensation, Title 82, ch. 10, part 5.

82-11-123. Requirements for oil and gas operations. Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures (in order to facilitate the discovery of potential geothermal energy sources), the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in a manner that prevents the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(a) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(b) the requirements of 82-11-163 are met.

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

(7) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, or water.

(8) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part); amd. Sec. 4, Ch. 503, L. 1987; amd. Sec. 78, Ch. 83, L. 1989; amd. Sec. 5, Ch. 530, L. 1989; amd. Sec. 1, Ch. 376, L. 1993; amd. Sec. 6, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 deleted former (5)(b) that read: "(b) if the well is completed after June 30, 1989, until the owner notifies the board that the well is producing oil and gas in commercial quantities and meets the requirements of 82-11-162"; and made minor changes in style. Amendment effective February 24, 1997.

Cross-References

Geophysical exploration, Title 82, ch. 1, part 1.

82-11-124. Requirements relating to waste prevention. Subject to the administrative control of the department under 2-15-121, the board shall, for the purpose of preventing waste:

(1) regulate the drilling, producing, and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and

(2) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part).

82-11-125. Availability of cores or chips, cuttings, and bottom-hole temperatures to board. (1) An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, the cuttings from the well, and the bottom-hole temperatures of the wells, in order to facilitate the discovery of geothermal potential. However, cores, chips, or cuttings need not be so made available for a period of 6 months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when, in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish.

(2) The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's rules, shall within 3 years from the date of the cessation of the drilling of the well make available to the board complete sets of sample cuttings and representative cores or chips and well logs of the wells, which logs shall include among other information the size of casing used, the type and depth of water if any located, and bottom-hole temperatures for geothermal purposes. The board shall require and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to the commencement of the drilling, conditioned upon the proper plugging of the well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells; prior to abandonment, the wells shall be plugged by the owner thereof or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board.

History: En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959; amd. Sec. 1, Ch. 208, L. 1973; amd. Sec. 80, Ch. 253, L. 1974; amd. Sec. 2, Ch. 222, L. 1975; R.C.M. 1947, 60-144; amd. Sec. 1, Ch. 248, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

82-11-126. Availability of facilities to bureau of mines. The board may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings or samples of cores and cuttings as are or may be required by the bureau in the furtherance of its oil and gas research and study. Bottom-hole temperatures of oil and gas wells shall be made available to the bureau of mines and geology by the board in order to facilitate the determination of possible geothermal energy sources.

History: En. Sec. 3, Ch. 32, L. 1957; amd. Sec. 82, Ch. 253, L. 1974; amd. Sec. 3, Ch. 222, L. 1975; R.C.M. 1947, 60-148.

Cross-References

Establishment of Bureau of Mines and Geology, 20-25-211.

Bureau of Mines and Geology — purpose, 20-25-212.

Bureau Director and assistants, 20-25-213.

82-11-127. Prohibited activity. (1) No person may:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) No person may drill, construct, convert, or operate a class II injection well or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

History: En. Sec. 7, Ch. 503, L. 1987.

82-11-128 through 82-11-130 reserved.

82-11-131. Privilege and license tax. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, an operator or producer of oil and gas shall pay an assessment not to exceed 3/10 of 1% of the market value of each barrel of crude petroleum produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported from the state.

(2) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the assessment and may from time to time reduce or increase the amount of the assessment as the expenses chargeable against the oil and gas conservation fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in this section. The amount of the assessment must be a percentage factor, not to exceed 100%, of the rate set forth in subsection (1), and the same percentage factor must be applied by the board in fixing the amount of the assessment on each barrel of crude petroleum produced and each 10,000 cubic feet of natural gas produced. A producer of the crude petroleum and natural gas shall pay the assessment on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for the producer, as well as for another, including a royalty holder.

(3) For the purposes of this section, the provisions of Title 15, chapter 36, part 3, apply to the privilege and license tax assessment.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(1) thru (3); amd. Sec. 7, Ch. 201, L. 1979; amd. Sec. 5, Ch. 93, L. 1983; amd. Sec. 144, Ch. 370, L. 1987; amd. Secs. 1, 2, Ch. 573, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-11-132. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(5); amd. Sec. 6, Ch. 93, L. 1983; amd. Sec. 2, Ch. 265, L. 1987.

82-11-133. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(6); amd. Sec. 7, Ch. 93, L. 1983.

82-11-134. Permit fees. In addition to the privilege and license tax, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, a person shall secure from the board a drilling permit and shall pay to the board therefor the following amounts:

(1) for each well whose estimated depth is 3,500 feet or less, $25;

(2) from 3,501 feet to 7,000 feet, $75;

(3) 7,000 feet and deeper, $150.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(4).

82-11-135. Money earmarked for board expenses. The state treasurer shall deposit all money collected under 15-36-324(8)(b), (9), (10)(b), and under this chapter in the state special revenue fund. The money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the state special revenue fund must be credited to the board.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(7); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 265, L. 1987; amd. Sec. 35, Ch. 15, Sp. L. July 1992; amd. Sec. 48, Ch. 451, L. 1995; amd. Sec. 13, Ch. 466, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 466 in first sentence substituted "15-36-324(8)(b), (9), (10)(b)" for "15-36-324(7)(b)". Amendment effective April 30, 1997.

Cross-References

No money expended except upon appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

Treasury fund structure, 17-2-102.

82-11-136. Expenditure of funds from bonds for plugging wells. The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in 82-11-123(5).

History: En. Sec. 4, Ch. 265, L. 1987; amd. Sec. 61, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 deleted second sentence that read: "These funds are statutorily appropriated as provided in 17-7-502." Amendment effective July 1, 1997.

82-11-137. Class II injection well operating fee. (1) For the purpose of providing funds for defraying the expenses of operating and enforcing the class II injection well regulatory program, as defined by the federal environmental protection agency or any successor agency, each operator of a class II injection well may be required to pay an annual operating fee not to exceed $300 per injection well.

(2) The department shall collect the operating fee at such time as the board may prescribe by rule. All money collected under this section must be forwarded to the state treasurer for deposit in the state special revenue fund and must be used for the purpose prescribed in subsection (1).

(3) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the fee described in subsection (1) and may from time to time reduce or increase the amount thereof as the expenses chargeable against the state special revenue fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in subsection (1). The amount of the fee must be expressed in dollars.

History: En. Sec. 13, Ch. 503, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-11-138 through 82-11-140 reserved.

82-11-141. Administrative procedure. (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing which shall be effective upon promulgation. An emergency order may not remain in effect beyond the next regular meeting of the board.

(4) (a) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(b) At least 20 days prior to the public hearing, a person who applies to establish a well spacing unit under 82-11-201 or who applies to pool all interests in a well spacing unit pursuant to 82-11-202 shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given.

(5) If written notice is not possible, proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a foreman or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing.

History: En. Sec. 9, Ch. 238, L. 1953; amd. Sec. 1, Ch. 213, L. 1961; amd. Sec. 71, Ch. 253, L. 1974; R.C.M. 1947, 60-132; amd. Sec. 6, Ch. 19, L. 1979; amd. Sec. 1, Ch. 238, L. 1987; amd. Sec. 5, Ch. 503, L. 1987.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-11-142. Subpoena power — civil actions. (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter does not impair, abridge, or delay a cause of action for damages or other civil remedy which a person may have or assert against a person violating this chapter or a rule or order issued under it. A person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive.

(3) A person, association, corporation, or agency of the state or federal government may apply to the board protesting a violation or a threatened violation of this chapter. The board shall make an investigation and make a written report to the person, association, corporation, or agency that made the protest. If a violation is established by the investigation of the board, the board shall take appropriate enforcement action. If the board fails to take appropriate enforcement action or to bring suit to enjoin a threatened violation of this chapter or a rule or order of the board within 10 days after receipt of written request to do so by a person who is or will be adversely affected, the person making the request may bring the suit in his own behalf to restrain the threatened violation in a court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person threatening to violate this chapter or a rule or order of the board, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(4) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and, if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with the subpoena and to attend before the board and produce any subpoenaed records, books, and documents for examination and to give his testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify therein.

History: **En. Sec. 10, Ch. 238, L. 1953; amd. Sec. 72, Ch. 253, L. 1974; R.C.M. 1947, 60-133; amd. Sec. 6, Ch. 503, L. 1987.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Mileage allowance for witnesses, 2-18-503.

What acts or omissions are contempts, 3-1-501.

Duties of District Court Clerk relating to jurors and witnesses, 3-5-510.

Procedure in reference to witnesses' warrants, 3-5-511.

Statement to Board of County Commissioners concerning witnesses, 3-5-512.

Subpoenas, Title 26, ch. 2, part 1.

Witness fees in courts of record and before certain court officers, 26-2-501.

Injunctions, Title 27, ch. 19.

Mandamus, Title 27, ch. 26.

82-11-143. Rehearing. A person adversely affected by a rule or order of the board may within 20 days after its effective date apply to the board in writing for a rehearing. The application for rehearing must be acted upon at the board's next regularly scheduled meeting after filing of the application, and if granted, the rehearing must be held without undue delay.

History: **En. Sec. 11, Ch. 238, L. 1953; amd. Sec. 73, Ch. 253, L. 1974; R.C.M. 1947, 60-134; amd. Sec. 1, Ch. 363, L. 1991.**

82-11-144. Court review. Any interested person adversely affected by any provision of this chapter or by any rule or order adopted by the board hereunder or by any act done or threatened thereunder may obtain court review and seek relief by a suit for an injunction against the board as defendant, which suit may be instituted in the district court of the county where the board keeps its principal office or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person", as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well or involves some other act which clearly affects the plaintiff even though the effect is indirect. If the act complained of involves a general order for a pool or the right to drill a well therein, a person who owns or has an interest in a well in the pool, which well is capable of producing oil or gas, shall be considered to be prima facie an interested person. The suit shall be given a preferential setting and shall be tried de novo and disposed of as an ordinary civil suit and not upon the record of any hearing before the board. The statute, rule, order, or decision involved in the suit shall be prima facie valid; however, the finding of fact, actual or presumed, made by the board in support of the rule, order, or decision involved in the suit is not binding on the court though supported by evidence introduced at a hearing before the board. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any board action. The court shall:

(1) compel board action unlawfully withheld or unreasonably delayed;

(2) hold unlawful and set aside board action, findings, and conclusions found to be:

(a) arbitrary, unreasonable, capricious, and abuse of discretion or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege, or immunity;

(c) in excess of statutory jurisdiction, authority, or limitations or short of statutory right;

(d) without observance of procedure required by law; or

(e) unwarranted by the facts; and

(3) consider all the evidence, pass on the credibility of witnesses and the weight to be given their testimony, and resolve such fact issues as may be necessary for decision in the case.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(1).

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

82-11-145. Injunction or restraining order. (1) A temporary restraining order or temporary injunction of any kind may not be granted against the board and its members or against the attorney general or against an employee of the board, restraining the board and its members or employees or the attorney general from enforcing this chapter or any rule or order made thereunder, until it is shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this chapter or the rule or order complained of is probably invalid or unreasonable and that, if enforced against the complaining party, will probably cause an irreparable injury.

(2) With respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute or of any provision of this chapter or of a rule or order thereunder involved in the suit must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the board or its members or its employees or the attorney general may not be effective until the plaintiff executes a bond with sufficient sureties in such amount and upon such conditions as the court directs. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. A person claiming injury must bring suit within 6 months after the date of the final determination of the validity in whole or in part of the provisions of the chapter or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit is forever barred.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(2), (3).

Cross-References

Immunity of governmental entities from actions for damages, 2-9-105 through 2-9-113.

Injunctions, Title 27, ch. 19.

82-11-146. Appeal. An appeal to the supreme court may be taken from any final judgment, decree, or order in the action, as provided in the Montana Rules of Appellate Procedure.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(4).

82-11-147. Violations. (1) Notwithstanding any other provisions of this chapter, if the board finds upon receipt of evidence:

(a) that a person is violating or threatening to violate this chapter or a rule or order of the board, the board may bring suit against that person in the district court of any county where the violation occurs or is threatened to restrain the person from continuing the violation or from carrying out the threat of violation; or

(b) that a person is violating this chapter or a rule or order of the board in a manner for which the board is authorized to institute proceedings pursuant to 82-11-149, the board may issue an order either assessing a civil penalty in the amount prescribed in 82-11-149, up to a maximum administrative penalty of $125,000, or requiring compliance with this chapter or a rule or order, or both.

(2) In a suit under subsection (1)(a), the court may grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.

History: En. Sec. 13, Ch. 238, L. 1953; amd. Sec. 75, Ch. 253, L. 1974; R.C.M. 1947, 60-136; amd. Sec. 10, Ch. 503, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

82-11-148. Criminal penalties. A person is guilty of a misdemeanor and shall be subject to a fine of not more than $10,000 per day of violation or imprisonment in a county jail for a term not exceeding 6 months or to both the fine and imprisonment if that person willfully violates any lawful rule or order of the board or if that person, for the purpose of evading this chapter or any rule or order of the board, knowingly and willfully:

(1) makes or causes to be made a false entry or statement in a report required by this chapter or by a rule or order of the board or a false entry in a record, account, or memorandum required by this chapter or by a rule or order;

(2) omits or causes to be omitted from the record, account, or memorandum full, true, and correct entries as required by this chapter or by a rule or order; or

(3) removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum.

History: En. Sec. 19, Ch. 238, L. 1953; amd. Sec. 78, Ch. 253, L. 1974; R.C.M. 1947, 60-142; amd. Sec. 12, Ch. 503, L. 1987.

Cross-References

Unsworn falsification to authorities, 45-7-203.

Tampering with or fabricating physical evidence, 45-7-207.

82-11-149. Civil penalties. (1) A person is guilty of a misdemeanor and is subject to a civil penalty of at least $75 and not more than $10,000 a day for each violation if that person violates any rule or order of the board or a provision of this chapter. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The board, or the attorney general upon request of the board, shall institute and maintain any enforcement proceedings in the name of the state.

(4) Civil penalties collected pursuant to this section must be deposited in the state general fund.

History: En. Sec. 11, Ch. 503, L. 1987; amd. Sec. 2, Ch. 363, L. 1991; amd. Sec. 73, Ch. 509, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

Misdemeanor defined, 45-2-101.

82-11-150. Legal assistance. When requested by the board, the attorney general or the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The board may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

History: En. Sec. 8, Ch. 503, L. 1987.

82-11-151. Emergencies — notice and hearing. (1) Notwithstanding any other provisions of this chapter, if the administrator or a board member finds that a person is committing or about to commit an act in violation of this chapter or any order or rule issued under it which, if it occurs or continues, will cause substantial pollution, the administrator under order of the board or the board member is authorized to order the person to stop, avoid, or moderate the act, including immediate closure or shutdown of any well. This authority is limited to acts the harmful effects of which will not be remedied immediately after the commission or cessation of the act or will represent an immediate threat to public health, safety, or welfare.

(2) When any emergency requiring immediate action is found pursuant to subsection (1), the board is authorized to issue an emergency order without notice or hearing, which is effective upon issuance as provided in 82-11-141(3).

(3) The board may have written notice served, personally or by mail, on the alleged violator or his agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action the board requires, and the time within which the action is to be taken. For the purposes of this section, service by mail is complete on the date of mailing.

(4) The notice must indicate that the order is an emergency order.

(5) Pursuant to 82-11-141(3), the board may consider the emergency order at its next regular meeting, without compliance with the notice requirements of this chapter if they cannot be accomplished within the time available, and enter a second emergency order.

(6) Upon issuing an order under subsection (2), the board may fix a place and time for a hearing, not later than 5 days thereafter unless the person to whom the order is directed requests a later time. The board may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. If the board considers it practicable, the hearing must be held in the county where the violation is alleged to have occurred. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order.

(7) If the order of the board is affirmed, it must be accompanied by a statement specifying the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. An action for review of the order of the board may be initiated in the manner specified in 82-11-144. The initiation of such an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 9, Ch. 503, L. 1987.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

82-11-152 through 82-11-160 reserved.

82-11-161. Oil and gas production damage mitigation account — statutory appropriation. (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 82-11-136.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

History: En. Sec. 6, Ch. 530, L. 1989; amd. Sec. 56, Ch. 112, L. 1991; amd. Sec. 4, Ch. 734, L. 1991; amd. Sec. 48, Ch. 349, L. 1993; amd. Sec. 7, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 deleted former (3)(b) that read: "(b) all fees received by the board from owners of producing wells pursuant to 82-11-162"; in (4), near end of first and second sentences after "restore the well", inserted "sump, hole"; and made minor changes in style. Amendment effective February 24, 1997.

82-11-162. Repealed. Sec. 8, Ch. 34, L. 1997.

History: En. Sec. 7, Ch. 530, L. 1989; amd. Sec. 49, Ch. 451, L. 1995.

82-11-163. Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123 upon its acceptance of surety in the form of a certificate of deposit, in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well, or in the form of a property bond of two times the value of the required certificate of deposit. The release of the certificate of deposit or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged.

History: En. Sec. 8, Ch. 530, L. 1989.

82-11-164. Lien created. (1) The oil and gas production damage mitigation account has a lien in the amount of the expenditure from the account under 82-11-161(4), plus interest accrued at the rate of 10% a year, against all real and personal property in this state owned by the responsible person or in which the responsible person has an interest.

(2) The lien created under subsection (1) must be filed in the office of the secretary of state and must attach to all real or personal property of the responsible person.

(3) A lien created by this section is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable laws governing foreclosure of liens.

History: En. Sec. 9, Ch. 530, L. 1989; amd. Sec. 5, Ch. 734, L. 1991.

Cross-References

Liens generally, Title 71, ch. 3.

82-11-165 through 82-11-170 reserved.

82-11-171. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 36, Ch. 15, Sp. L. July 1992.

Part 2
Unit Operations

82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit, and the well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The exception may be included if, upon application, notice, and hearing, the board finds that

the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.

(5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.

(6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1).

History: En. Sec. 6, Ch. 238, L. 1953; amd. Sec. 58, Ch. 253, L. 1974; R.C.M. 1947, 60-129; amd. Sec. 1, Ch. 313, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Administrative procedure, 82-11-141.

82-11-202. Pooling of interest within spacing unit. (1) (a) When two or more separately owned tracts are embraced within a temporary or permanent spacing unit or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit.

(b) The board, upon the application of an interested person, may enter an order pooling all interests in the permanent spacing unit for the development and operation of the permanent spacing unit and the allocation of production if the applicant has made an unsuccessful, good faith attempt to voluntarily pool the interests within the permanent spacing unit. The applicant must be a person who owns an interest in the oil or gas underlying the permanent spacing unit or who has drilled a well, proposes to drill a well, or proposes to conduct other operations on a well, including recompleting, deepening, or stimulation. The pooling order must be made after a hearing and must be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the permanent spacing unit the opportunity to recover or receive without unnecessary expense a just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a permanent spacing unit covered by a pooling order are considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners of the tracts. That portion of the production allocated to each tract included in a permanent spacing unit covered by a pooling order must when produced be considered for all purposes to have been produced from the tract by a well drilled on the tract.

(2) (a) As to each owner who refuses to pay the owner's share of the costs of development or other operations referred to in subsection (1), the order must provide for payment of the owner's share of the cost out of and only out of production from the well allocable to the owner's interest in the permanent

spacing unit, excluding royalty or other interest not obligated to pay any part of the cost and excluding the royalty provided for in subsection (2)(c). If a well has not been drilled prior to the hearing on the application, the pooling order must provide for the drilling and operating of a well on the permanent spacing unit and for the payment of the cost of the well, which may include a reasonable charge for supervision, handling, and storage. If a dispute arises as to the cost, the board by subsequent order, after notice and hearing, shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production. After all costs of drilling and operation are recovered, all of the owners in the permanent spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

(b) If a well has been drilled prior to the hearing on the application and an owner, after written demand, has failed or refused to pay the owner's share of the costs of development or other operations referred to in subsection (1) or if a well has not been drilled prior to the hearing on the application and an owner refuses to agree to pay the owner's share of drilling and completion costs, in addition to the costs under subsection (2)(a), the order must include as costs:

(i) 100% of the refusing owner's share of the cost of newly acquired surface equipment beyond the wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and piping, plus 100% of the refusing owner's share of the cost of operation of the well commencing with first production and continuing until the agreeing owners have recovered the costs; and

(ii) 200% of the refusing owner's share of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 200% of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A refusing owner of an oil and gas interest in a spacing unit that is not subject to any lease or other contract for development of oil and gas is considered to own a landowner royalty equal to one-eighth of the owner's proportionate share of production from the well until such time as the consenting owners recover the costs specified in subsection (2)(b). Any interest in production from the spacing unit to which the interest of the refusing owner may be subject must be deducted from the royalty considered to be owned by the refusing owner. After costs have been recovered by the agreeing owners, the refusing owner owns the refusing owner's proportionate share of the well, surface facilities, and production and is liable for further costs as if the refusing owner had originally agreed to drilling of the well.

(d) The operator of a well under a pooling order in which there is a refusing owner shall upon demand furnish the refusing owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced and the amount of proceeds realized from the sale of production during the preceding month.

(e) If an owner of an oil and gas interest in a temporary spacing unit refuses to agree to pay the owner's share of the costs of drilling and operating a well drilled within the unit and an application is filed for pooling of the interests in the well in a permanent spacing unit, the board shall, upon hearing the application for pooling of the interests for the well, order that the parties who agreed to share in the cost of drilling and operating the well prior to commencement of the drilling operation recover out of the refusing owner's share of the costs as provided in subsections (2)(a) and (2)(b).

(3) (a) An owner is presumed to have refused to pay the owner's share of costs if prior to the spud date of the well, the owner fails to pay or agree in writing to promptly pay the share of the costs after notice by the well operator either:

(i) acknowledged in writing by the owner as received; or

(ii) sent at least 30 days prior to the spud date of the well to the owner by certified mail, addressed to the owner's address of record in the office of the clerk and recorder of the county where the well is to be drilled or to the owner's address on file with the board.

(b) The notice must set forth the location of the well, the projected depth and target formations, the anticipated costs of drilling and completing the well, and the anticipated spud date of the well.

History: En. Sec. 7, Ch. 238, L. 1953; amd. Sec. 59, Ch. 253, L. 1974; R.C.M. 1947, 60-130; amd. Sec. 1, Ch. 694, L. 1985; amd. Sec. 2, Ch. 313, L. 1993.

Cross-References

Pooling agreements and unit operations by Board of Land Commissioners, 77-3-430.

Acreage pooling by political subdivisions, 82-10-202.

Administrative procedure, 82-11-141.

82-11-203. Pooling agreements not in violation of antitrust laws. (1) An agreement for the unit or cooperative development and operation of a field or pool or any part of either or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or cooperative operation, including water flooding, is authorized and may be performed.

(2) Such an agreement does not violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade if the agreement is approved by the board as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas.

History: En. Sec. 8, Ch. 238, L. 1953; amd. Sec. 60, Ch. 253, L. 1974; R.C.M. 1947, 60-131.

Cross-References

Restraint of trade, Title 30, ch. 14, part 2.

82-11-204. Hearing on operation of pool as unit. (1) The board, upon the application of persons owning leasehold interests underlying 60% of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field for enhanced recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least 60 days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at those persons' last known addresses, of the applicant's intention to make the application. At the same time producers shall be furnished with a plan of unit operations. Upon written request of an operator of a lease which is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing.

History: En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971; amd. Sec. 61, Ch. 253, L. 1974; amd. Sec. 2, Ch. 336, L. 1977; R.C.M. 1947, 60-131.1.

Cross-References

Unit operation not restraint of trade, 82-11-215.

82-11-205. Board order for unit operation — criteria. The board shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at the hearing, that:

(1) such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) the value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting such operations; and

(3) the full areal extent of the pool or pools or part thereof has been reasonably defined and determined by drilling operations.

History: En. Sec. 2, Ch. 33, L. 1969; amd. Sec. 2, Ch. 150, L. 1971; amd. Sec. 62, Ch. 253, L. 1974; R.C.M. 1947, 60-131.2.

82-11-206. Terms and conditions of plan for unit operations. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) a description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) a statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement;

(3) a plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the

economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) a provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus 2% for the service. Recovery of the money advanced plus interest shall be limited to and only shall be recoverable from the owners' share of production. The recovery shall be as follows:

(a) in the case of a field producing oil or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the 18 months immediately preceding the effective date of the unit; during the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from 100% of the owners' share of production; for purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools as a result of the natural energy therein and without the introduction of an enhanced recovery program;

(b) in the case of a field producing only gas, from 100% of the owners' share of production;

(c) in the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery shall be from 75% of the owners' increased share of production from such subsequent program;

(6) a provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;

(7) a provision whereby the unit operator, after having operated for a minimum period of 2 years, can be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that:

(a) he can operate more efficiently and economically than the present operator;

(b) he is qualified and financially responsible;

(c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and

(d) the challenged operator does not initiate the conditions of operations of the challenging owner within 60 days of the challenged operator's receipt of the conditions of operations;

(8) the time when the unit operations shall commence and the manner in which and the circumstances under which the unit operations shall terminate; and

(9) such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights.

History: En. Sec. 3, Ch. 33, L. 1969; amd. Sec. 3, Ch. 150, L. 1971; amd. Sec. 63, Ch. 253, L. 1974; amd. Sec. 3, Ch. 336, L. 1977; R.C.M. 1947, 60-131.3.

82-11-207. Approval of plan for unit operations by persons paying costs. An order of the board providing for unit operations may not become effective unless and until the plan for unit operations prescribed by the board has been approved in writing by those persons who under the board's order will be required to pay at least 80% of the costs of the unit operations and also by the persons owning at least 80% of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, if one owner who is obligated to pay costs of the unit operation owns 80% or more but less than 100%, the approval of that owner and at least one other such owner is required, and if one person entitled to production or proceeds thereof that will be credited to interests which are free of costs owns 80% or more but less than 100%, the approval of that person and at least one other such person is required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of 6 months from the date on which the order providing for unit operations is made, the board shall revoke the order unless for good cause shown the board extends the time.

History: En. Sec. 4, Ch. 33, L. 1969; amd. Sec. 64, Ch. 253, L. 1974; R.C.M. 1947, 60-131.4.

82-11-208. Board orders — amendment. An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions and notice as an original order providing for unit operations; however, if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the persons owning interests which are free of costs, such as royalties, overriding royalties, and production payments, is not required, and an order of amendment may not change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in the tract.

History: En. Sec. 5, Ch. 33, L. 1969; amd. Sec. 65, Ch. 253, L. 1974; R.C.M. 1947, 60-131.5.

82-11-209. Units established by previous order. The board may provide by an order for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by the order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory shall be made in order to charge the newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory shall be taken immediately prior to adding the newly committed interest.

History: En. Sec. 6, Ch. 33, L. 1969; amd. Sec. 4, Ch. 150, L. 1971; amd. Sec. 66, Ch. 253, L. 1974; R.C.M. 1947, 60-131.6.

82-11-210. Unit operations — less than whole of pool. An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose and the conduct thereof will have no adverse effect upon other portions of the pool.

History: En. Sec. 7, Ch. 33, L. 1969; R.C.M. 1947, 60-131.7.

82-11-211. Operations considered as done by all owners in unit. (1) All operations, including but not limited to the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be considered for all purposes to have been actually produced from the tract by a well drilled thereon.

(2) Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that the obligations cannot be performed because of the order of the board.

History: En. Sec. 8, Ch. 33, L. 1969; amd. Sec. 67, Ch. 253, L. 1974; R.C.M. 1947, 60-131.8.

82-11-212. Property rights and operator's lien. That portion of the unit production allocated to any tract and the proceeds from the sale thereof shall be the property and income of the several persons to whom or to whose credit the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to 82-11-206(5)(a), have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area. Such lien may be perfected and enforced in the same manner as provided in Title 71, chapter 3, part 5, as amended. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver such allocated share of gas to the owner in kind; but the operator and the other owners of interest shall not be required to bear the cost of providing additional facilities for the delivery of such gas.

History: En. Sec. 9, Ch. 33, L. 1969; amd. Sec. 5, Ch. 150, L. 1971; R.C.M. 1947, 60-131.9.

Cross-References

Liens — generally, Title 71, ch. 3.

82-11-213. Contract not terminated by board order. A division order or other contract relating to the sale or purchase or production from a tract may not be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

History: En. Sec. 10, Ch. 33, L. 1969; amd. Sec. 68, Ch. 253, L. 1974; R.C.M. 1947, 60-131.10.

82-11-214. Title to oil and gas rights not affected by board order. Except to the extent that the parties affected so agree, an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

History: En. Sec. 11, Ch. 33, L. 1969; amd. Sec. 69, Ch. 253, L. 1974; R.C.M. 1947, 60-131.11.

82-11-215. Unit operation not restraint of trade. The formation of a unit as provided in 82-11-204 through 82-11-216 and the operation of the unit under order of the board shall not be in violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

History: En. Sec. 12, Ch. 33, L. 1969; amd. Sec. 70, Ch. 253, L. 1974; R.C.M. 1947, 60-131.12.

Cross-References

Restraint of trade, Title 30, ch. 14, part 2.

82-11-216. No creation of relationship between parties in unit. The formation of such a unit as herein provided will not create a relationship between the parties thereto which shall be deemed to be or constitute a joint endeavor, adventure, undertaking, association, or mining or other partnership.

History: En. Sec. 13, Ch. 33, L. 1969; R.C.M. 1947, 60-131.13.

Part 3

Interstate Oil and Gas Conservation Compact

82-11-301. Authorization to join interstate compact for conservation of oil and gas. The governor of the state of Montana is hereby authorized and directed, for and in the name of the state of Montana, to join with other states in the Interstate Compact To Conserve Oil and Gas, which was heretofore executed in the city of Dallas, Texas, on February 16, 1935, and is now deposited with the department of state of the United States and which has been extended with the consent of congress to September 1, 1947.

History: En. Sec. 1, Ch. 121, L. 1945; R.C.M. 1947, 60-601.

82-11-302. Interstate oil and gas compact. The Interstate Compact To Conserve Oil and Gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Article I

This agreement may become effective within any compacting state at any time as prescribed by that state and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

Article II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III

(1) Each state bound hereby agrees that within a reasonable time it will enact laws or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) the operation of any oil well with an inefficient gas-oil ratio;

(b) the drowning with water of any stratum capable of producing oil or gas or both oil and gas in paying quantities;

(c) the avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

(d) the creation of unnecessary fire hazards;

(e) the drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

(f) the inefficient, excessive, or improper use of the reservoir energy in producing any well.

(2) The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

Article IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

Article V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof or create or perpetuate monopoly or to promote regimentation but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

Article VI

(1) Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the interstate oil compact

commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

(2) The commission shall have the power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

(3) No action shall be taken by the commission except:

(a) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and

(b) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half year to the daily average production of the compacting states during said period.

Article VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

Article VIII

(1) This compact shall expire September 1, 1947. But any state joining herein may, upon 60 days' notice, withdraw herefrom.

(2) The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

(3) This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

(4) Done in the city of Dallas, Texas, this sixteenth day of February, 1935.

(Originally signed by the representatives of the following states: Oklahoma, Texas, New Mexico, Colorado, Illinois, Michigan, California, Arkansas, and Kansas.)

History: En. Sec. 2, Ch. 121, L. 1945; R.C.M. 1947, 60-602.

82-11-303. Extension of expiration date. The governor of Montana is further authorized and empowered, for and in the name of the state of Montana, to execute agreements for the further extension of the expiration date of the Interstate Compact To Conserve Oil and Gas and to determine if and when it shall be for the best interest of the state of Montana to withdraw from said compact upon 60 days' notice as provided by its terms. In the event he shall determine that the state should withdraw from said compact, he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Montana from said compact.

History: En. Sec. 3, Ch. 121, L. 1945; R.C.M. 1947, 60-603.

82-11-304. Governor as member of interstate oil compact commission. The governor shall be the official representative of the state of Montana on the interstate oil compact commission, provided for in the Interstate Compact To Conserve Oil and Gas, and shall exercise and perform for the state of Montana all the powers and duties as a member of the interstate oil compact commission; provided that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Montana as a member of said commission. Said assistant representative shall take the oath of office prescribed by The Constitution of the State of Montana, which shall be filed with the secretary of state.

History: En. Sec. 4, Ch. 121, L. 1945; R.C.M. 1947, 60-604.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

82-11-305. Limitation on power of representative. Nothing in this part shall be construed as granting any power to the representative of the state of Montana in his private or official capacity or to the interstate oil compact commission to prorate, allocate, regulate, or control oil or gas production or refined products thereof within the state of Montana or the markets therefor and shall not have the effect or be construed as in any manner surrendering to the federal government any rights over or in the production, sale, or transportation of oil or gas or the refined products thereof in the state of Montana; nor shall anything in this part be understood or construed to bind or obligate the state of Montana to enact any new legislation or to amend or alter any laws heretofore enacted and now in force pertaining to the oil and gas industries in Montana.

History: En. Sec. 5, Ch. 121, L. 1945; R.C.M. 1947, 60-605.

Cross-References

Separation of powers, Art. III, sec. 1, Mont. Const.

82-11-306. Expenses of representative. The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission shall be allowed and paid his reasonable expenses while engaged in the performance of his official duties, and his expenses and all other expense incurred in connection with the interstate oil compact and the interstate oil compact commission shall be paid out of the board of oil and gas conservation revenue fund in accordance with the provisions of 82-11-135, as amended.

History: En. Sec. 6, Ch. 121, L. 1945; amd. Sec. 33, Ch. 39, L. 1977; R.C.M. 1947, 60-606.

CHAPTERS 12 THROUGH 14

RESERVED

CHAPTER 15

REGULATION OF PETROLEUM PRODUCTS

Part 1 — Regulation of Manufacture and Distribution

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Part 1

Regulation of Manufacture and Distribution

82-15-101. Definitions. As used in this part, the following definitions apply:

(1) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(4) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Liquefied petroleum product container" means an American society of mechanical engineers-approved container that can hold 110 gallons or more of a liquefied petroleum product.

(6) "Mislabeled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

(7) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

(8) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(9) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (3).

(10) "Sell" and "sale" includes barter and exchange.

History: En. 60-234 by Sec. 1, Ch. 77, L. 1977; R.C.M. 1947, 60-234; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 65, L. 1993.

82-15-102. Enforcement of part — rules. This part shall be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

History: En. 60-235 by Sec. 2, Ch. 77, L. 1977; R.C.M. 1947, 60-235.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-15-103. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, shall be determined by the department and shall be based upon nationally recognized standards and specifications such as are published from time to time by the American society for testing materials. When so determined by the department and adopted as rules, such standards and specifications are the standards and specifications for such products sold in this state and official tests of such products shall be based upon them.

History: En. 60-236 by Sec. 3, Ch. 77, L. 1977; R.C.M. 1947, 60-236.

82-15-104. Department authorized to employ laboratory for testing. The department may employ a laboratory having sufficient facilities to make tests of petroleum products as required and pay reasonable compensation for the analyses and tests made by it.

History: **En. 60-237 by Sec. 4, Ch. 77, L. 1977; R.C.M. 1947, 60-237.**

82-15-105. Licenses and fees — status of license on transfer of ownership. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. The fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on the anniversary date established by rule by the board of review established in 30-16-302. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees have been paid.

(4) If ownership of a measuring device changes and the device:

(a) remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;

(b) is moved to a new location, the license is void, and the new owner shall:

(i) apply for a new license that will expire on the anniversary date of that year, as provided in subsection (3); and

(ii) pay the applicable fees.

History: **En. 60-238 by Sec. 5, Ch. 77, L. 1977; R.C.M. 1947, 60-238; amd. Sec. 1, Ch. 252, L. 1983; amd. Sec. 1, Ch. 56, L. 1991; amd. Sec. 1, Ch. 498, L. 1993; amd. Sec. 20, Ch. 366, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 366 in (2) inserted second sentence regarding payment of fees by credit card and discounting of fees; in (3), at end of first sentence, substituted "the anniversary date established by rule by the board of review established in 30-16-302" for "December 31 of each year"; and in (4)(b)(i), after "expire on", substituted "the anniversary date of that year, as provided in subsection (3)" for "December 31 of that year".

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-15-106. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after hearing noticed for not less than 10 days. Violation of any provision of this part or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which the department considers just and proper.

History: **En. 60-239 by Sec. 6, Ch. 77, L. 1977; R.C.M. 1947, 60-239.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

82-15-107. Inspections, sampling, and tests by department to insure compliance with part. (1) For the purpose of obtaining information regarding suspected violation of this part, the department has access to all places where the commodities subject to regulation under this part are sold, offered for sale or kept for sale, manufactured, transported, or stored or where the books, papers, records, or documents relative to those transactions are kept and may inspect and copy them at any place in this state.

(2) The department may sample, inspect, and test any of the commodities subject to this part upon tendering payment for them, whether they originate at points outside the state or otherwise and whether they are in transport or at rest in places where they are to be sold.

History: En. 60-240 by Sec. 7, Ch. 77, L. 1977; R.C.M. 1947, 60-240.

Cross-References

Sale of gasoline and distillates on other than gross basis unlawful — exception, 30-12-409.

82-15-108. Approved measure required for part delivery. Part of a compartment delivery may be made only by an approved, calibrated, and sealed meter or an approved measure. Gauge stick measurement is not permitted. All tank markers must be positioned and sealed as provided by the department. The department shall fix by rule fees for retesting meters or measuring devices or vehicle tanks used for distribution by petroleum or liquefied petroleum dealers and for any other special service rendered.

History: En. 60-241 by Sec. 8, Ch. 77, L. 1977; R.C.M. 1947, 60-241.

Cross-References

Sale of gasoline and distillates on other than gross basis unlawful — exception, 30-12-409.

82-15-109. Full compartment sales — approval of meter. Full compartment sales or deliveries may only be made in a manner that shall be provided by the department by rule. All other sales or deliveries may only be made through a meter which has been approved, calibrated, and sealed by the department or by weight, unless otherwise provided by the department.

History: En. 60-242 by Sec. 9, Ch. 77, L. 1977; R.C.M. 1947, 60-242.

Cross-References

Sale of gasoline and distillates on other than gross basis unlawful — exception, 30-12-409.

82-15-110. Unlawful acts. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the same has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device which has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the commodities in all respects meet the tests and standards prescribed;

(7) sell, offer, or expose for sale any petroleum product which is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended.

History: En. 60-243 by Sec. 10, Ch. 77, L. 1977; R.C.M. 1947, 60-243.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Deceptive business practices, 45-6-318.

82-15-111. Penalty for violations. A person who violates any of the provisions of this part or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than $10 or more than $1,000 and shall be punished for any subsequent offense by a fine of not less than $50 or more than $5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.

History: En. 60-244 by Sec. 11, Ch. 77, L. 1977; R.C.M. 1947, 60-244.

82-15-112. Injunction against violations. The department may apply to any court of competent jurisdiction for a temporary or permanent injunction, or both, restraining any person for violating any provision of this part or any rule promulgated by the department pursuant to this part.

History: En. 60-245 by Sec. 12, Ch. 77, L. 1977; R.C.M. 1947, 60-245.

Cross-References

Injunctions, Title 27, ch. 19.

82-15-113. Refilling of liquefied petroleum product containers — unlawful acts. Only the owner or a person authorized by the owner may:

(1) fill or refill a liquefied petroleum product container;

(2) deface, erase, obliterate, cover up, remove, conceal, or change the name or other identification of the owner or the information on the manufacturer's specification plate; or

(3) place the name of a person other than the owner on the liquefied petroleum product container.

History: En. Sec. 2, Ch. 65, L. 1993.

82-15-114. Violation — penalty. A person who violates 82-15-113 is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500 or by imprisonment in the county jail for a term not exceeding 120 days, or both.

History: En. Sec. 3, Ch. 65, L. 1993.

82-15-115. Owner identification. The owner of a liquefied petroleum product container shall place the name, initials, or trademark of the owner on the dome near the filling apparatus of each container.

History: En. Sec. 4, Ch. 65, L. 1993.

Part 2

Price Discrimination

82-15-201. Standard petroleum product defined. The term "standard petroleum product" as used herein refers to and includes gasoline, fuel oil, distillates, greases, and lubricating oils.

History: En. Sec. 2, Ch. 111, L. 1935; re-en. Sec. 4193.2, R.C.M. 1935; R.C.M. 1947, 60-402.

82-15-202. Purpose. This part is intended to compel a person, firm, company, association, or corporation doing business in the state of Montana and engaged in the selling of and dealing in standard petroleum products to treat a customer in one part of the state of Montana on an equal basis with a customer in another part of the state or in the nearest adjoining state and to promote the uniform application of the law of the state of Montana providing a tax on gasoline used by a motor vehicle when traveling over a public highway. This part shall be liberally construed to accomplish those purposes.

History: En. Sec. 3, Ch. 111, L. 1935; re-en. Sec. 4193.3, R.C.M. 1935; R.C.M. 1947, 60-403; amd. Sec. 8, Ch. 201, L. 1979.

Cross-References

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

82-15-203. Discrimination in price of petroleum products. (1) Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana and engaged in the selling of any standard petroleum product that shall demand or collect from any person or customer a higher price for any standard petroleum product in one part of the state of Montana than the price being demanded or collected at substantially the same time by such person, firm, company, association, or corporation from other persons or customers in another part of the state of Montana or in the nearest adjoining state for a like article of standard petroleum product shall be guilty of discrimination which is hereby declared to be a fraud and the agents or officers of such person, firm, company, association, or corporation participating, guilty of a misdemeanor.

(2) In the trial of an action under the provisions of this part, in the determination of the justification of the price demanded or collected by a person, firm, company, association, or corporation charged with a violation of the provisions of this part, transportation, quantity of sales, emergencies, cost of doing business, or similar differences under the respective conditions may be offered as a matter of defense or justification for the differences in price demanded or collected. When competent evidence is offered in the trial of any action under this part of a demand for or the receipt of a higher price for any standard petroleum product in the state of Montana by any person, firm, company, association, or corporation than such person, firm, company, association, or corporation demanded, collected, or received at substantially the

same time for the same or a similar article of standard petroleum product in another part of the state of Montana or in the nearest adjoining state, the burden of proof shall then be upon such person, firm, company, association, or corporation or agents or officers on trial to prove that the difference in the price demanded or collected was justified.

History: En. Sec. 1, Ch. 111, L. 1935; re-en. Sec. 4193.1, R.C.M. 1935; R.C.M. 1947, 60-401.

Cross-References

Unfair competition in sales, 30-14-207.

Accountability for conduct of corporation, 45-2-312.

82-15-204. Investigation of complaints — revocation of license. If complaint shall be made to the attorney general that any person, firm, company, association, or corporation is guilty of discrimination as defined by this part, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of such person, firm, company, association, or corporation, as the case may be, and to permanently enjoin such person, firm, company, association, or corporation from doing business in this state. If in such action the court shall find that such person, firm, company, association, or corporation is guilty of discrimination as defined by this part, such court shall annul the charter or revoke the permit or license of such person, firm, company, association, or corporation and may permanently enjoin it or them from transacting business in this state.

History: En. Sec. 4, Ch. 111, L. 1935; re-en. Sec. 4193.4, R.C.M. 1935; R.C.M. 1947, 60-404.

82-15-205. County attorney to prosecute violations. If any person shall present to the county attorney of any county in the state of Montana, in which county such discriminatory acts of any person, firm, company, association, or corporation shall have been committed, a sworn written statement of the price paid, the date, and the parties selling and buying and reasonably reliable information of the price demanded or collected by such person, firm, company, association, or corporation for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by such person, firm, company, association, or corporation, then it shall be the duty of such county attorney to promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of his reasons for not commencing and prosecuting an action under this part.

History: En. Sec. 4-A, Ch. 111, L. 1935; re-en. Sec. 4193.5, R.C.M. 1935; R.C.M. 1947, 60-405.

82-15-206. Penalty. Any person, firm, company, association, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and shall be punishable by a fine of not exceeding $500.

History: En. Sec. 5, Ch. 111, L. 1935; re-en. Sec. 4193.6, R.C.M. 1935; R.C.M. 1947, 60-406.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Disposition of fines and forfeitures, 46-18-603.

82-15-207. Liability for civil and exemplary damages. In addition to the penalty above prescribed, any customer of such person, firm, company, association, or corporation may bring a civil action in any county in which such offending person, firm, company, association, or corporation may be doing business and recover therein not only actual damages for violation of this part but also exemplary damages for such reasonable sum as the jury may deem proper punishment for the unlawful practice of discrimination as herein defined.

History: En. Sec. 6, Ch. 111, L. 1935; re-en. Sec. 4193.7, R.C.M. 1935; R.C.M. 1947, 60-407.

Cross-References

Damages, Title 27, ch. 1, part 2.

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RESERVED

TITLE 85

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3. Atmospheric Water — Weather Modification.
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5. Water Commissioners and Water Mediators.
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7. Irrigation Districts.
8. Drainage Districts.
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Chapters 10 through 14 reserved.
15. Dam Safety Act.
16. Wharves and Docks.
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Title Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Water Pollution Control Advisory Council, 2-15-2107.

Board of Water Well Contractors, 2-15-3307.

Water Courts, Title 3, ch. 7.

County water and sewer districts, Title 7, ch. 13, parts 22 and 23.

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Taxation of sewage disposal and domestic water supply systems, 15-7-103.

Recreational use of streams, Title 23, ch. 2, part 3.

Smith River Management Act, Title 23, ch. 2, part 4.

Water well contractors, Title 37, ch. 43.

Aircraft landings and takeoffs from public waters, 67-1-204.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Floodplain and floodway management, Title 76, ch. 5.

Conservation districts — water conservation, Title 76, ch. 15, part 4.

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CHAPTER 1

WATER RESOURCES

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Part 1
General Provisions

85-1-101. Policy considerations. It is hereby declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution thereof are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water of the state of Montana is not in the interest of the people and is to be restricted.

(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan".

History: En. Sec. 2, Ch. 158, L. 1967; amd. Sec. 119, Ch. 253, L. 1974; R.C.M. 1947, 89-101.2; amd. Sec. 1, Ch. 631, L. 1979.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Protection and improvement of environment — prevention of unreasonable depletion and degradation of natural resources, Art. IX, sec. 1, Mont. Const.

Department of Natural Resources and Conservation, Title 2, ch. 15, part 33.

Recreation, Title 23, ch. 2.

Environmental protection — environmental policy, Title 75, ch. 1.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Control of state waters for propagation of fish, 87-1-223.

Wildlife protection — stream protection, Title 87, ch. 5, part 5.

85-1-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(3) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired that are considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(6) (a) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605.

(b) The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency of the United States, or any other governmental entity.

(7) "Project" means any one of the works defined in this section or any combination of works that are physically connected or jointly managed and operated as a single unit.

(8) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(9) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the renewable resource grant and loan program as set forth in 85-1-604.

(10) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

(11) "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients; and

(b) purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

(12) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized group or community that is located in Montana, that exercises self-government powers, and that is recognized as eligible for those services that are provided by the United States to Indians because of their status as Indians.

(13) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation in rivers and streams, and the provision of greater local and state control of Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(14) "Water development project" means a project as defined in subsection (7), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

(15) (a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works.

(b) The term includes:

(i) all means of conserving and distributing water, including but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) all works for the conservation, development, storage, distribution, and utilization of water, including but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying water for public, domestic, industrial, or other uses and for fire protection.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; R.C.M. 1947, 89-102(part); amd. Sec. 3, Ch. 505, L. 1981; amd. Sec. 29, Ch. 298, L. 1983; amd. Sec. 1, Ch. 332, L. 1987; amd. Sec. 1, Ch. 491, L. 1989; amd. Sec. 8, Ch. 478, L. 1993; amd. Sec. 71, Ch. 18, L. 1995; amd. Sec. 415, Ch. 418, L. 1995; amd. Sec. 1, Ch. 436, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 436 inserted definition of tribal government; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Definition of public use — waters property of state, Art. IX, sec. 3, Mont. Const.

Board of Water Well Contractors, 2-15-3307.

Prescriptive easement not acquired by recreational use of surface waters, 23-2-322.

Water well contractors, Title 37, ch. 43.

Recreational purposes defined, 70-16-301.

85-1-103. Interpretation of title. The object of this title is to promote the prosperity and welfare of the people of Montana through the sound management of the state's water resources, and its provisions are to be given a liberal interpretation.

History: En. Sec. 66, Ch. 146, L. 1909; re-en. Sec. 7262, R.C.M. 1921; re-en. Sec. 7262, R.C.M. 1935; amd. Sec. 38, Ch. 460, L. 1977; R.C.M. 1947, 89-2109.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

85-1-104 through 85-1-110 reserved.

85-1-111. Public ways. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation. This section shall not be construed so as to affect or impair, in any manner, any rights acquired prior to July 1, 1901, by any person, association of persons, or corporation. The right of any person, association of persons, or corporation to take and use any water, as now provided by law, from any stream or streams for the purpose of irrigation or any beneficial or industrial pursuit shall not be abridged.

History: En. Sec. 2570, Pol. C. 1895; amd. Sec. 1, p. 126, L. 1901; re-en. Sec. 1326, Rev. C. 1907; re-en. Sec. 1604, R.C.M. 1921; Cal. Pol. C. Sec. 2348; re-en. Sec. 1604, R.C.M. 1935; R.C.M. 1947, 89-501.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Interference with navigable water as nuisance, 27-30-101, 45-8-111.

Extent of ownership of land bounded by water, 70-16-201.

Irrigation districts, Title 85, ch. 7.

Navigable waters subject to fishing rights, 87-2-305.

85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Secs. 1, 2, Ch. 95, L. 1933; re-en. Secs. 3717.1, 3717.2, R.C.M. 1935; R.C.M. 1947, 26-336, 26-337.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Interference with navigable water as nuisance, 27-30-101, 45-8-111.

Extent of ownership of land bounded by water, 70-16-201.

Navigable waters subject to fishing rights, 87-2-305.

85-1-113 through 85-1-120 reserved.

85-1-121. Repealed. Sec. 3, Ch. 706, L. 1983.

History: En. Sec. 1, Ch. 220, L. 1921; re-en. Sec. 7135, R.C.M. 1921; re-en. Sec. 7135, R.C.M. 1935; R.C.M. 1947, 89-846.

85-1-122. Clark Fork River. The waters of the Clark Fork River may be impounded or restrained within the state of Montana for a distance not exceeding 25 miles from the Idaho-Montana boundary line by a dam located on said river in the state of Idaho and constructed by any person, firm, partnership, or corporation authorized to do business in the state of Montana. Any present or future appropriations of water in the watershed in the state of Montana for irrigation and domestic use above said dam shall have priority over water for power use at said dam.

History: En. Sec. 1, Ch. 3, L. 1951; R.C.M. 1947, 89-856.

Part 2
Administration

85-1-201. Rules. The department may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

History: En. 89-102.1 by Sec. 121, Ch. 253, L. 1974; R.C.M. 1947, 89-102.1; amd. Sec. 416, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-1-202. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 2, Ch. 279, L. 1965; amd. Sec. 122, Ch. 253, L. 1974; R.C.M. 1947, 89-103.2.

85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department shall submit to the environmental quality council established in 5-16-101 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as provided in this section, the department shall consult with the environmental quality council established in 5-16-101 and solicit the advice of the committee in carrying out its duties under this section.

History: En. Sec. 5, Ch. 158, L. 1967; amd. Sec. 138, Ch. 253, L. 1974; R.C.M. 1947, 89-132.1(1) thru (5); amd. Sec. 18, Ch. 573, L. 1985; amd. Sec. 1, Ch. 381, L. 1989; amd. Sec. 417, Ch. 418, L. 1995; amd. Sec. 70, Ch. 545, L. 1995.

Cross-References

Public participation in governmental operations, Title 2, ch. 3.

Publication of legal notices, Title 18, ch. 7, part 2.

Renewable resource grant and loan program, Title 85, ch. 1, part 6.

Surface water and ground water, Title 85, ch. 2.

85-1-204. Department powers over state water. (1) The department may sell, lease, and otherwise dispose of water impounded under this chapter. The water may be sold for the purpose of irrigation, development of power, watering of stock, or other purposes. The department may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take the necessary actions to appropriate and conserve the water for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the water of this state that it may acquire by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of water, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair, reasonable, and equitable reconciliation must be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by a court.

(4) The department may hold hearings relating to the rights of respective claimants after first giving the notice that it considers appropriate. The department shall make findings of the date and quantity of appropriation and use of all claimants that the department recognizes and observes in diverting the water that the department owns. The department may measure and distribute the water to the owner of the recognized appropriation under agreed-upon terms.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the water owned or administered under agreement with respective owners. The owner of a prior right who contends that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the water of a stream, it may divert or authorize the diversion at a point on the stream or a portion of the stream when it is done without injury to a prior appropriator.

History: Ap. p. Sec. 21, Ch. 35, Ex. L. 1933; re-en. Sec. 349.22, R.C.M. 1935; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977; Sec. 89-125, R.C.M. 1947; Ap. p. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; Sec. 89-118, R.C.M. 1947; R.C.M. 1947, 89-118(part), 89-125(1) thru (6); amd. Sec. 2, Ch. 573, L. 1985; amd. Sec. 13, Ch. 301, L. 1995; amd. Sec. 418, Ch. 418, L. 1995.

Cross-References

Bonds of state officers and employees, 2-9-601, 2-9-602.

Development of state lands, Title 77, ch. 1, part 6.

Water rights in connection with geothermal development, 77-4-108.

Hydroelectric resources, Title 77, ch. 4, part 2.

Department assistance to Water Judges, 85-2-243.

Right to appropriate, 85-2-301.

Reservation of waters, 85-2-316.

85-1-205. Acquisition of water in federal reservoirs. The department may acquire water or water storage by purchase option or agreement with the federal government from any federal reservoir for the purpose of sale, rent, or distribution for any beneficial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate.

History: En. Sec. 21, Ch. 35, Ex. L. 1933; re-en. Sec. 349.22, R.C.M. 1935; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977; R.C.M. 1947, 89-125(7); amd. Sec. 1, Ch. 706, L. 1983; amd. Sec. 14, Ch. 573, L. 1985.

Cross-References

Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state, 2-1-209.

85-1-206. Construction of works by department. (1) The department may construct works, with the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency of the United States and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of operation and maintenance, and the revenue to be derived from the operation of the project. A project may not be constructed unless, according to the estimates, the revenue to be derived will be sufficient to pay the cost of operation and maintenance and the principal and interest of loans or revenue bonds issued for the cost of the project. In connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security for the bonds.

(2) If the bid of the lowest responsible bidder on any capital improvement associated with public works exceeds the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water users' association, whenever an association is involved, before the bid is accepted. Capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require approval of the water users' association.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects. The projects to be constructed must qualify as parts of the statewide program and must be approved by the department upon the showing of prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the principal and interest of loans and revenue bonds issued to finance the construction. The failure to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security for the bonds.

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; re-en. Sec. 349.5, R.C.M. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977; R.C.M. 1947, 89-105(1) thru (3); amd. Sec. 2, Ch. 332, L. 1987; amd. Sec. 14, Ch. 301, L. 1995; amd. Sec. 419, Ch. 418, L. 1995.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

Bond issues, Title 17, ch. 5.

Bid security, Title 18, ch. 1, part 2.

State construction contracts, Title 18, ch. 2.

Water users' associations, Title 85, ch. 6, part 1.

85-1-207. Determination of costs of works. The department, in determining how the cost of works must be met, shall consider the value of public benefits and the repayment capacity of the water users. A state grant may be provided by the department to compensate for the value of public benefits, to minimize the liabilities of the state of Montana, and to pay the difference between the water users' repayment capacity and the cost of works.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; R.C.M. 1947, 89-102(part); amd. Sec. 3, Ch. 332, L. 1987.

Cross-References

Recreation, Title 23, ch. 2.

Aquatic ecosystem protections, Title 75, ch. 7.

Water conservation and flood control projects, Title 76, ch. 5, part 11.

Irrigation districts, Title 85, ch. 7, part 1.

Dam safety, Title 85, ch. 15.

Wildlife protection, Title 87, ch. 5.

85-1-208. Construction across streams, highways, or other obstacles. (1) The department may construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches, or flumes in such manner as to afford security to life and property. The department shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. A company whose railroads are intersected or crossed by the works shall unite with the department in forming the intersection and crossing. If the railroad company and the department or the owners and controllers of the property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor or the points or the manner of the crossing or intersections, the amount shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) This section does not require the payment to the state or any subdivision thereof of a sum for the right to cross a public highway with the works. A right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain the works over and through the lands which are the property of this state.

History: En. Sec. 1, Ch. 69, L. 1937; amd. Sec. 125, Ch. 253, L. 1974; R.C.M. 1947, 89-106.

Cross-References

Highway crossing railroad, canal, or ditch, 60-4-110.

Duty of railroads to construct drains and ditches, 69-14-240.

Eminent domain, Title 70, ch. 30.

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

Rights-of-way for irrigation works, 85-7-1909.

85-1-209. Acquisition of property by department. (1) The department may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

(2) In a condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, must be made parties and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) Taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects the part of the water rights that the department determines is necessary. Upon the adoption of the order, the water rights are considered a part of each of the works or projects to the extent that the water rights have been apportioned or allocated to the works or projects.

History: (1) thru (3)En. Sec. 4, Ch. 35, Ex. L. 1933; re-en. Sec. 349.4, R.C.M. 1935; amd. Sec. 123, Ch. 253, L. 1974; Sec. 89-104, R.C.M. 1947 (4)En. Sec. 2, Ch. 3, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; Sec. 89-102, R.C.M. 1947; R.C.M. 1947, 89-102(7), 89-104; amd. Sec. 15, Ch. 301, L. 1995; amd. Sec. 420, Ch. 418, L. 1995.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

85-1-210. Disposal of property by department. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of water for the purpose of irrigation, development of power, watering of stock, or other purposes, the department may sell, lease, or otherwise dispose of water from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition of the project, if any, and of all interest on the bonds, costs, and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. Except for a water project for which no water purchase contracts are managed by the department and for which no money is collected by the department, the department shall make a determination of the market value of a water project prior to its sale or other disposition. The department's determination of market value must consider all liens, encumbrances, and other limitations on the water project.

History: En. Sec. 6, Ch. 95, L. 1935; re-en. Sec. 349.24, R.C.M. 1935; amd. Sec. 137, Ch. 253, L. 1974; R.C.M. 1947, 89-127; amd. Sec. 1, Ch. 156, L. 1981; amd. Sec. 1, Ch. 305, L. 1987; amd. Sec. 16, Ch. 301, L. 1995; amd. Sec. 421, Ch. 418, L. 1995.

Cross-References

Irrigation districts, Title 85, ch. 7.

Drainage districts — bonds and revenue, Title 85, ch. 8, part 6.

Conservancy districts — finance, Title 85, ch. 9, part 6.

85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges to provide at all times funds that are sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of the rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) The department may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way, easements, properties, or interests or otherwise take and receive the income or profit and revenue from property without regard to other laws providing for the disposition of state property. Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department, prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;
(ii) Delphia-Melstone canals;
(iii) Hysham pumping canals;
(iv) Lewistown ditch;
(v) Livingston ditch;

(vi) Florence canal;
(vii) Paradise canal;
(viii) Park Branch canal;
(ix) Sidney pumping canals;
(x) South Side canal;
(xi) Vigilante canal; and
(xii) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109 must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection of the canal project that the department considers necessary, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property.

History: **En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(1), (3), (5); amd. Sec. 2, Ch. 156, L. 1981; amd. Sec. 2, Ch. 305, L. 1987; amd. Sec. 1, Ch. 425, L. 1991; amd. Sec. 1, Ch. 53, L. 1993; amd. Sec. 17, Ch. 301, L. 1995; amd. Sec. 422, Ch. 418, L. 1995.**

Cross-References

Bond issues, Title 17, ch. 5.

Contracts generally, Title 28, ch. 2, 3.

85-1-212. Repealed. Sec. 500, Ch. 418, L. 1995.

History: **En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(4).**

85-1-213. Institution of court actions by department. The department may institute in any court any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights-of-way for diversion and distributing canals, and lateral ditches and other means of distribution of water and may also in any court institute, maintain, and prosecute to final determination actions, suits, and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for the reservoir, diversion and distributing canals, lateral ditches, and other means of distribution of the water. The department may join owners of waters appropriated by a person, association, or corporation from the streams of the state so that adjudication may be had of all surplus water upon all the streams and sources of water supply of a project constructed by the department. All costs and expenses of the actions, suits, or special proceedings shall be paid by the department out of funds provided under this chapter.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; R.C.M. 1947, 89-118(2).

Cross-References

Bonding of state employees, 2-9-602.

Water resources — finance, Title 85, ch. 1, part 3.

Adjudication of water rights, Title 85, ch. 2, part 2.

85-1-214. Exercise of department powers — scope of jurisdiction. The department may exercise any of its powers in:

(1) an adjoining state, unless the exercise of that power is not permitted under the laws of that state or of the United States;

(2) a national forest or public domain of the United States adjoining or located in the state of Montana, unless the exercise of those powers is not permitted under the laws of the United States;

(3) an adjoining country, unless the exercise of those powers is not permitted under the laws of that country or of the United States or under the treaties between that country and the United States.

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; re-en. Sec. 349.5, R.C.M. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977; R.C.M. 1947, 89-105(4).

Cross-References

Disclaimer of jurisdiction over Indian lands, Art. I, Mont. Const.

Jurisdiction in federal enclaves, 2-1-201.

Consent to purchase of lands by United States for national forest purposes — jurisdiction, 2-1-210.

85-1-215. Department duties — records and operations. The department shall keep accounting records of each project and by July 1 of each year prepare a financial statement showing the financial status of each project. All books and papers pertaining to matters provided for in this chapter shall at all reasonable times be open to the inspection of an interested party or citizen of the state. Except as otherwise provided in this chapter, the department has full charge and control of the construction, operation, and maintenance of the works and the collection of all rates, charges, and revenue from them. The department shall proceed immediately with the construction of the works as soon as funds are made available and shall complete the works as rapidly as possible.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; R.C.M. 1947, 89-118(part); amd. Sec. 18, Ch. 301, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

85-1-216. Limitations on liabilities and obligations. No liability or obligation shall be incurred under this chapter beyond the extent to which money is provided under this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(part).

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Water resources — finance, Title 85, ch. 1, part 3.

85-1-217. Restoration and repair of damaged property. All public or private property damaged or destroyed in carrying out the powers granted under this chapter shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(part).

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

85-1-218. Employment of county surveyors. Whenever deemed practical the department may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the department.

History: En. Sec. 2, Ch. 169, L. 1935; re-en. Sec. 349.64, R.C.M. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974; R.C.M. 1947, 89-402(part).

Cross-References

Office of County Surveyor, Title 7, ch. 4, part 28.

85-1-219. State-owned works — department approval — bids. (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department must solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) the proposed construction costs are less than $25,000; or

(d) an exigency exists.

(4) The provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded under this section. The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are less than $25,000.

History: En. Sec. 1, Ch. 498, L. 1985.

Cross-References

Bond issues, Title 17, ch. 5.

Bid security, Title 18, ch. 1, part 2.

85-1-220. State water project hydroelectric power generation special revenue account created — revenue allocated. (1) There is a state water project hydroelectric power generation special revenue account within the state special revenue fund established in 17-2-102.

(2) Except as provided in the applicable bond resolution, all revenue derived from hydroelectric power generation at state water conservation projects under Title 85, chapter 1, must be paid into this account as received.

(3) The revenue received under this section must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities.

(4) The funds deposited in the state water project hydroelectric power generation special revenue account under this section but not appropriated during the biennium and money appropriated from the account but not expended during the biennium for which it is appropriated must remain in the account for future appropriation under this section and may not be appropriated from the account except as authorized under this section.

History: En. Sec. 1, Ch. 370, L. 1991; amd. Sec. 62, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 deleted (5) and (6) that read: "(5) There is a statutory appropriation pursuant to 17-7-502 to allow the department to transfer available funds from the state water project hydroelectric power generation special revenue account when needed to pay debt service on state water project bonds, including but not limited to broadwater power project bonds.

(6) There is a statutory appropriation pursuant to 17-7-502 for the department to transfer available funds from the broadwater replacement and renewal account when needed to pay debt service on the broadwater power project bonds"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Sale of power and allocation of revenue, 85-1-510.

85-1-221. Contracts with the United States. The department may enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this chapter and may in those contracts or leases authorize the United States, its instrumentalities, or agencies to supervise and approve the construction, maintenance, and operation of the works or any project or portion thereof, until such times as any money expended, advanced, or loaned by said United States, its instrumentalities, or agencies and agreed to be repaid thereto by the department is fully repaid. It is a purpose and intent of this chapter that the department may accept cooperation from the United States, its instrumentalities, and agencies in the construction, maintenance, and operation and in financing the construction of any works authorized by this chapter, and the department may do all things necessary in order to avail itself of that aid, assistance, and cooperation under federal legislation now or hereafter enacted by congress.

History: En. Sec. 13, Ch. 35, Ex. L. 1933; re-en. Sec. 349.14, R.C.M. 1935; amd. Sec. 131, Ch. 253, L. 1974; R.C.M. 1947, 89-117.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

Irrigation districts — relations with United States, 85-7-1906.

Montana Dam Safety Act — exemption of federal structures, 85-15-107.

85-1-222. Conformity to federal regulations authorized. For the purpose of obtaining financial aid from the United States of America, the department may adjust the plans and operation of a project, created under this chapter, to conform to the laws and regulations of the federal government and the supervision of any agency constituted under that authority and may exercise those powers whenever conferred.

History: En. Sec. 20, Ch. 35, Ex. L. 1933; amd. Sec. 135, Ch. 253, L. 1974; R.C.M. 1947, 89-124.

Cross-References

Federal revenue and endowments, Title 17, ch. 3.

Irrigation districts — relations with United States, 85-7-1906.

85-1-223. Negotiations with other states by the department. The department may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution, and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. It shall cooperate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact.

History: En. Sec. 1, Ch. 27, Ex. L. 1933; re-en. Sec. 1956.1, R.C.M. 1935; amd. Sec. 2, Ch. 280, L. 1965; Sec. 81-2009, R.C.M. 1947; amd. and redes. 89-142 by Sec. 112, Ch. 253, L. 1974; R.C.M. 1947, 89-142.

Cross-References

Reserved Water Rights Compact Commission, 2-15-212.

Yellowstone River Basin — surface water and ground water, Title 85, ch. 2, part 6.

Indian and federal water rights, Title 85, ch. 2, part 7.

Yellowstone River Compact, Title 85, ch. 20, part 1.

Fort Peck-Montana Compact, Title 85, ch. 20, part 2.

85-1-224. Contracts with state agencies and counties. (1) A state agency or the boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the department or the United States or its agencies may enter into:

(a) such contracts as are necessary with the department, the United States, or agencies of the United States or others for the purchase of water or water rights needed for those lands; and

(b) any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties, and state school and county lands the benefits of the water or water rights, which obligations may be similar to those of persons who become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes.

(2) These contracts may include agreements that the state and counties shall be subject to the same charges and payments as are other water users within the projects; however, none of those charges, payments, or costs shall constitute a lien against the state's interest in the lands.

(3) The obligations provided for in this section to be incurred upon behalf of the counties and the state shall not be in the nature of general obligations by either said counties or the state of Montana but shall constitute liens only upon such water or water rights purchased for the benefit of such lands.

History: (1), (2)En. Sec. 2, Ch. 97, L. 1935; re-en. Sec. 349.37, R.C.M. 1935; amd. Sec. 139, Ch. 253, L. 1974; Sec. 89-140, R.C.M. 1947; (3)En. Sec. 3, Ch. 97, L. 1935; re-en. Sec. 349.38, R.C.M. 1935; Sec. 89-141, R.C.M. 1947; R.C.M. 1947, 89-140, 89-141.

Cross-References

County contracts, Title 7, ch. 5, part 23.

Reservation of waters, 85-2-316.

Transfer of appropriation right, 85-2-403.

Irrigation districts — United States contracts — loans, sinking fund, and investment, 85-7-1951.

Irrigation districts — United States contracts — court approval required, 85-7-1957.

Irrigation districts — power to contract with United States cumulative, 85-7-1958.

Conservancy districts — participation in federal programs, 85-9-409.

Part 3
Finance

Part Cross-References

Bond issues, Title 17, ch. 5.

85-1-301. Water conservation revenue bonds. (1) The department may provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, of any one or more public works. The principal and interest of the bonds are payable solely from the special fund provided for payment. The bonds must mature at the time or times, not more than 40 years from their date or dates, that may be fixed by the resolution but may be made redeemable before maturity at the option of the state, to be exercised by the department, at the price or prices and under the terms and conditions that may be fixed by the department prior to the issuance of the bonds. The department shall determine the rate of interest the bonds shall bear, the time or times of payment of interest, the form of the bonds and the interest coupons to be attached to the bonds, and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or outside of the state.

(2) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may be issued and sold from time to time and in amounts that may be determined by the department, and the department may sell the bonds in a manner and for a price as it may determine to be for the best interests of the state. The proceeds of the bonds must be used solely for the payment of the cost of the works and must be checked out in the manner and under the restrictions, if any, that the department may provide.

(3) Each resolution providing for the issuance of bonds must set forth the project or projects for which the bonds are to be issued, and the bonds authorized by each resolution constitute a separate series. The bonds of each series must be identified by a series letter or letters and may be sold and delivered at one time or from time to time.

History: **En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(1), (3), (5); amd. Sec. 45, Ch. 505, L. 1981; amd. Sec. 423, Ch. 418, L. 1995.**

Cross-References

Bond issues, Title 17, ch. 5.

Conservancy districts — finance, Title 85, ch. 9, part 6.

85-1-302. Limitations on state liability. All bonds issued under 85-1-301 and 85-1-303 shall contain a statement on their face that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter set forth. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. Such bonds shall not constitute or be a debt, liability, or obligation of the state and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, property, and facilities to be acquired out of the proceeds of such bonds.

History: **En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(2).**

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

U.C.C. — investment securities, Title 30, ch. 8.

85-1-303. Procedure in case of insufficient bond proceeds. If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the works, additional bonds may in like manner be issued to provide the amount of the deficit and, unless otherwise provided in the trust indenture or in the resolution authorizing the bonds, are considered to be of the same issue and are entitled to payment from the same fund, without preference or priority of the bonds first issued for the same works. If the proceeds of bonds issued for the works exceed the cost of the works, the surplus must be paid into the fund provided for the payment of principal and interest of the bonds. Prior to the preparation of definitive bonds, the department may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things that are specified and required by this chapter or by the constitution of the state.

History: **En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(4); amd. Sec. 424, Ch. 418, L. 1995.**

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Refunding bonds, Title 17, ch. 5, part 3.

85-1-304. Lien upon bond proceeds. All moneys received from any bonds issued pursuant to 85-1-301 and 85-1-303 shall be applied solely to the payment of the cost of the works or to the appurtenant debt service fund and to the "administration fund", as hereinafter provided, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustee hereinafter provided for in respect of such bonds.

History: **En. Sec. 7, Ch. 35, Ex. L. 1933; R.C.M. 1947, 89-110; amd. Sec. 30, Ch. 298, L. 1983.**

Cross-References

Fund structure, 17-2-102.

Liens, Title 71, ch. 3.

85-1-305. Use of trust indenture to secure bonds. In the discretion of the department, a series of the bonds may be secured by a trust indenture by and between the department and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

History: **En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(1); amd. Sec. 425, Ch. 418, L. 1995.**

Cross-References

U.C.C. — secured transactions, Title 30, ch. 9.

Banks and trust companies, Title 32, ch. 1.

Trust indentures — applicable laws, 71-1-112.

85-1-306. Provisions for protecting bondholders. Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works and the custody, safeguarding, and application of all money. It may provide that the works must be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the original purchasers of the bonds issued for the works, or to their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and revenue of the works or other money pertaining to the works must be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. The enumeration of particular powers granted by this section may not be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the works affected by the indenture.

History: **En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(2); amd. Sec. 426, Ch. 418, L. 1995.**

Cross-References

Bonds — validation, 17-5-203.

Public contracts — bid security, Title 18, ch. 1, part 2.

85-1-307. Provisions to secure payment of bonds. In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency of the United States) the cost of the works or project or in order to secure the payment of the bonds, the department may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and debt service fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien on the works or project;

(4) covenant to fix and establish prices, rates, and charges for water and other services made available in connection with the works or project to provide at all times funds that will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs to the works or project;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the department determines;

(5) make further covenants as to the prices, rates, and charges as the department determines;

(6) create special funds, in addition to those required by this chapter, for money reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds must be deposited and the manner in which they must be secured. It is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish indemnifying bonds or to pledge securities as required by the department;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation to the bonds, provide for the powers and duties of the trustee or trustees, limit the liabilities of trustees, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the department, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized in this chapter;

(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(3); amd. Sec. 31, Ch. 298, L. 1983; amd. Sec. 427, Ch. 418, L. 1995.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

County water and sewer districts, Title 7, ch. 13, parts 22 and 23.

Municipal sewage and water systems, Title 7, ch. 13, part 43.

Water supply and regulation, Title 7, ch. 13, part 44.

Fund structure, 17-2-102.

85-1-308. Provisions for conveyance in trust or mortgage. In the discretion of the department, any trust indenture executed by it as security for a series of bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of the works or project, including all water rights that are a part of the works or project, constructed with the proceeds of the bonds or with the proceeds as supplemented by the proceeds of a grant to aid in financing the construction from the United States or any instrumentality or agency of the United States. The trust indenture may be in a form and with rights, remedies, and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds or debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain title to the works or project free from any trust or other obligation of the department, the state of Montana, or the public as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in the works or project for sale, rental, distribution, or other beneficial use.

History: En. Sec. 4, Ch. 95, L. 1935; re-en. Sec. 349.9, R.C.M. 1935; R.C.M. 1947, 89-112; amd. Sec. 428, Ch. 418, L. 1995.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

Mortgages, Title 71, ch. 1.

Proceedings in foreclosure suits, 71-1-222.

85-1-309. Actions by trustee and bondholders. (1) Any holder of any bonds issued under 85-1-301 or 85-1-303 or any of the coupons attached to the bonds and the trustee, if any, except to the extent the rights may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may:

(a) either at law or in equity, by suit, action, mandamus, or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted under this chapter or under the resolution or trust indenture; and

(b) enforce and compel performance of all duties required by this chapter or by the resolution or trust indenture to be performed by the department.

(2) While any bonds issued by the department remain outstanding, the powers, duties, or existence of the department or any official or agency of the state may not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds.

History: En. Sec. 15, Ch. 35, Ex. L. 1933; re-en. Sec. 349.16, R.C.M. 1935; amd. Sec. 133, Ch. 253, L. 1974; R.C.M. 1947, 89-119; amd. Sec. 429, Ch. 418, L. 1995.

Cross-References

Official bonds — conditions, form, and signatures, 2-9-504.

Receivers, Title 27, ch. 20.

Mandamus, Title 27, ch. 26.

85-1-310. Refunding revenue bonds. The department may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" mean the "department" and references to "municipality" mean the "department".

History: En Sec. 11, Ch. 212, L. 1979; amd. Sec. 430, Ch. 418, L. 1995.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

85-1-311 through 85-1-320 reserved.

85-1-321. Funds in general. The department shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series....", another fund to be known as the "water fund, series....", and another fund to be known as the "debt service fund, series....", each fund to be identified by the same series letter or letters as the bonds of the series. The money in each fund must be deposited in a depository or depositories and secured in the manner determined by the department. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish indemnifying bonds or to pledge securities as may be required by the department. A separate account must be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project must be charged by the department in proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred.

History: En. Sec. 9, Ch. 35, Ex. L. 1933; re-en. Sec. 349.10, R.C.M. 1935; amd. Sec. 127, Ch. 253, L. 1974; R.C.M. 1947, 89-113; amd. Sec. 32, Ch. 298, L. 1983; amd. Sec. 431, Ch. 418, L. 1995.

Cross-References

Treasury funds and accounts, Title 17, ch. 2.

Banks and trust companies, Title 32, ch. 1.

85-1-322. Construction capital projects funds. The proceeds of the bonds of each series issued under 85-1-301 and 85-1-303 shall be placed to the credit of the appropriate construction capital projects fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction capital projects fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in the fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction capital projects fund shall be paid out or disbursed in such manner as may be determined by the department, subject to this chapter, to pay the cost of the works. Any surplus which may remain in any construction capital projects fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate debt service fund hereinafter provided for.

History: En. Sec. 10, Ch. 35, Ex. L. 1933; re-en. Sec. 349.11, R.C.M. 1935; amd. Sec. 128, Ch. 253, L. 1974; R.C.M. 1947, 89-114; amd. Sec. 33, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

Federal assistance management, Title 17, ch. 3, part 1.

Bond issues, Title 17, ch. 5.

85-1-323. Debt service funds. (1) The department shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the bonds, for the paying into the appropriate debt service fund at stated intervals all money then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All money in each debt service fund must be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as interest is due;

(b) the necessary fiscal agency charges for paying bonds and interest;

(c) the principal of the bonds as due; and

(d) any premiums upon bonds retired by call or purchase as provided in this chapter.

(2) (a) Prior to the issuance of the bonds of each series:

(i) the department may provide by resolution or by trust indenture for using the debt service fund or any part of the fund in the purchase of any of the outstanding bonds payable from the fund at the market price of the bonds but not exceeding the price, if any, at which the bonds, at the next interest date, are payable or redeemable;

(ii) all bonds redeemed or purchased must be canceled, and bonds may not be issued in place of the canceled bonds.

(b) The money in each debt service fund, less the reserve that may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest and principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided in this section, must be applied to the redemption of bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 12, Ch. 35, Ex. L. 1933; re-en. Sec. 349.13, R.C.M. 1935; R.C.M. 1947, 89-116; amd. Sec. 34, Ch. 298, L. 1983; amd. Sec. 432, Ch. 418, L. 1995.

Cross-References

Fund structure, 17-2-102.

Refunding bonds, Title 17, ch. 5, part 3.

85-1-324 through 85-1-330 reserved.

85-1-331. Acceptance and use of appropriations and contributions. The department may receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes in this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(2).

Cross-References

Authorization for governmental and public entities to take property by gift or devise, 7-8-103.

Who may make gift or devise to governmental entities, 7-8-104.

Federal revenue and endowments, Title 17, ch. 3.

85-1-332. Disposition of moneys collected. (1) For the purpose of carrying out the provisions of this chapter and such other water resource authority, powers, and duties as are conferred upon the department by law, the following moneys shall be deposited in the renewable resource grant and loan program state special revenue account created by 85-1-604:

(a) all gifts, donations, bequests, and devises made to the state therefor and proceeds of the sale thereof; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(b) all reimbursements for money advanced for the payment of the assessments upon state, school-granted, and other public lands for the improvement thereof as provided by law;

(c) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and diking, drainage, and diking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(d) all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities, or towns or their proportion of the cost thereof or from any other sources;

(e) except as otherwise provided by law, all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this chapter; and

(f) except as otherwise provided by law, all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project.

(2) All sums of money donated or contributed by the federal government or any department or agency thereof shall be deposited in a federal special revenue account.

History: En. Sec. 1, Ch. 169, L. 1935; re-en. Sec. 349.63, R.C.M. 1935; amd. Sec. 241, Ch. 147, L. 1963; amd. Sec. 153, Ch. 253, L. 1974; amd. Sec. 3, Ch. 460, L. 1977; R.C.M. 1947, 89-401; amd. Sec. 46, Ch. 505, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 512, L. 1985.

Cross-References

Fund structure, 17-2-102.

Retention of agency money, 17-2-202.

Federal revenue and endowments, Title 17, ch. 3.

Deposit of interest and income money by State Board of Land Commissioners, 20-9-342.

Drainage districts — bonds and revenue, Title 85, ch. 8, part 5.

Conservancy districts — disposition and investment of sale proceeds, 85-9-629.

85-1-333. Repealed. Sec. 52, Ch. 505, L. 1981.

History: En. Sec. 2, Ch. 169, L. 1935; re-en. Sec. 349.64, R.C.M. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974; R.C.M. 1947, 89-402(part).

85-1-334. Repealed. Sec. 52, Ch. 505, L. 1981.

History: En. Sec. 1, Ch. 148, L. 1951; amd. Sec. 78, Ch. 147, L. 1963; amd. Sec. 130, Ch. 253, L. 1974; R.C.M. 1947, 89-116.1.

Part 4

Special Projects
(Repealed. Sec. 1, Ch. 61, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

85-1-401.	En. Sec. 1, Ch. 534, L. 1979.
85-1-402.	En. Sec. 2, Ch. 534, L. 1979.
85-1-403.	En. Sec. 3, Ch. 534, L. 1979.
85-1-404.	En. Sec. 4, Ch. 534, L. 1979.
85-1-405.	En. Sec. 5, Ch. 534, L. 1979.
85-1-406.	En. Sec. 6, Ch. 534, L. 1979.
85-1-407.	En. Sec. 7, Ch. 534, L. 1979; amd. Sec. 57, Ch. 112, L. 1991.
85-1-408.	En. Sec. 8, Ch. 534, L. 1979.
85-1-409.	En. Sec. 9, Ch. 534, L. 1979.

Part 5

Power Generation at Projects

Part Cross-References

Hydroelectric resources, Title 77, ch. 4, part 2.

85-1-501. Survey of power generation capacity. The department shall study the economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on each of the water projects under its control and shall periodically update such studies as the cost of the electrical energy increases. In determining whether small-scale hydroelectric generation may be economically feasible on a particular project, the department shall consider:

(1) the estimated cost of construction of a facility;

(2) the estimated cost of maintaining, repairing, and operating the facility;

(3) the estimated cost of tying into an existing power distribution channel;

(4) the ability of public utilities or rural electric cooperatives to lease and operate such a facility;

(5) the debt burden to be serviced;

(6) the revenue expected to be derived; and

(7) the likelihood of a reasonable rate of return on the investment.

History: En. Sec. 1, Ch. 503, L. 1981.

85-1-502. Notice of availability of lease sites. (1) If after completion of the feasibility study of a particular project the department determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it shall publish notice and make the site available for lease for the purpose of small-scale hydroelectric power generation, pursuant to 85-1-502 through 85-1-508, unless that action would result in the forfeiture of any necessary federal license, permit, or exemption, in which case the department may proceed under 85-1-509.

(2) In issuing a notice of availability of a site for lease under this section, the department shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state.

History: En. Sec. 2, Ch. 503, L. 1981; amd. Sec. 1, Ch. 96, L. 1983; amd. Sec. 433, Ch. 418, L. 1995.

Cross-References

Printing and legal notices, Title 18, ch. 7.

85-1-503. Receipt of applications. (1) Applications for lease may be submitted by any person qualified to do business in Montana.

(2) The department shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the department requests.

History: En. Sec. 3, Ch. 503, L. 1981; amd. Sec. 1, Ch. 293, L. 1985; amd. Sec. 434, Ch. 418, L. 1995.

85-1-504. Determinations by department. (1) Within a reasonable time following the conclusion of the lease application period, the department shall hold a hearing to examine all applications that have been received for the lease of the project.

(2) Within 180 days following the conclusion of the lease application period, the department shall reject any or all applications or shall award a lease to the party whose offer, considered in its totality, is the most advantageous to the state.

(3) The decision must include a determination that the potential developer will provide an adequate royalty payment, is capable of carrying out the proposed development, can provide efficient and reliable service, and intends in good faith without unnecessary delay to proceed with the development.

(4) If all lease applications are rejected, the department may negotiate with all applicants on an equal basis in an effort to arrive at an acceptable application.

History: En. Sec. 4, Ch. 503, L. 1981; amd. Sec. 435, Ch. 418, L. 1995.

85-1-505. Lease conditions. (1) The lessee shall pay a royalty to the state as required in the lease.

(2) The department may authorize provisions in the lease that offer economic incentives for rapid development of the project or impose economic penalties for delays in development, which may include cancellation of the lease.

History: En. Sec. 5, Ch. 503, L. 1981; amd. Sec. 436, Ch. 418, L. 1995.

85-1-506. Compliance with federal law. The department may hold a license, permit, or exemption under federal law on a project.

History: En. Sec. 6, Ch. 503, L. 1981; amd. Sec. 2, Ch. 293, L. 1985.

85-1-507. Duration of lease. The term of the lease may not exceed the term of the license, permit, or exemption held by the department under 85-1-506 and may in no event exceed 55 years.

History: En. Sec. 7, Ch. 503, L. 1981.

85-1-508. Duties of the department. The department has primary responsibility for supervision of any lease.

History: En. Sec. 8, Ch. 503, L. 1981; amd. Sec. 437, Ch. 418, L. 1995.

85-1-509. Power generation by department authorized. (1) If no lease applications are received under 85-1-503 or if the department rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility must be accomplished in a manner determined by the department to be most feasible.

(3) The department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power-marketing agency organized in Montana and selling power to Montana customers.

History: En. Sec. 9, Ch. 503, L. 1981; amd. Sec. 438, Ch. 418, L. 1995.

Cross-References

Rural cooperative utilities, Title 35, ch. 18.

Public Utilities and Carriers, Title 69.

85-1-510. Sale of power and allocation of revenue. (1) If the operator of a small-scale hydroelectric generation facility under this chapter and a public utility or an electric cooperative are unable to mutually agree to a contract for the sale of electricity or a price for the electricity purchased by the utility or electric cooperative, the public service commission shall require the utility or electric cooperative to purchase the power under rates and terms established as provided in 85-1-511 through 85-1-513.

(2) The revenue derived from hydroelectric power generation under this part must be deposited in the state water project hydroelectric power generation special revenue account created under 85-1-220. The funds in the account must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities.

History: En. Sec. 10, Ch. 503, L. 1981; amd. Sec. 3, Ch. 370, L. 1991.

Cross-References

Rural cooperative utilities, Title 35, ch. 18.

Public Utilities and Carriers, Title 69.

85-1-511. Determination by the public service commission. A determination of the rates and terms under which the power must be purchased shall be made by the public service commission upon petition of the facility operator or a public utility or electric cooperative or during a rate proceeding involving the review of rates paid for electricity purchased from the facility. The commission shall render a decision within 120 days from receipt of the petition or before the completion of the rate review proceeding. The rate and terms of the determination must be according to the standards specified in 85-1-512.

History: **En. Sec. 11, Ch. 503, L. 1981.**

Cross-References

Public Service Commission, Title 69, ch. 1, part 1.

85-1-512. Standards for the determination. (1) The standards for the determination provided for in 85-1-511 by the public service commission shall include the following:

(a) Long-term contracts for the purchase of electricity by the utility or electric cooperative from a small-scale hydroelectric facility under this chapter shall be encouraged in order to enhance the economic feasibility of such facilities.

(b) The rates paid by a utility or electric cooperative to a small-scale hydroelectric facility may not exceed, over the term of the purchase contract, the incremental cost to the utility or electric cooperative of the electricity that, but for the purchase from the small-scale hydroelectric facility, the utility or electric cooperative would generate or purchase from another source.

(c) The rates to be paid by a utility or an electric cooperative for power purchased from a small-scale hydroelectric facility shall be established with consideration of the availability and reliability of the power produced.

(2) The commission may set these rates by use of any of the following methods:

(a) the levelized avoided cost over the term of the contract;

(b) the cost of production for the small-scale hydroelectric facility plus a just and reasonable return; or

(c) any other method that will promote the development of small-scale hydroelectric facilities.

History: **En. Sec. 12, Ch. 503, L. 1981.**

Cross-References

Public Service Commission, Title 69, ch. 1, part 1.

85-1-513. Purchase of power by electric cooperative not agreeing to be bound by public service commission determination. If any electric cooperative wishing to purchase power from a small-scale hydroelectric facility under this chapter refuses to submit to the ratemaking authority of the public service commission established in 85-1-511, then the rate for such cooperative may be determined by the federal energy regulatory commission upon proper petition. The facility shall sell power in accordance with such determination, so long as the rates and terms so established will allow the facility a reasonable return.

History: **En. Sec. 13, Ch. 503, L. 1981.**

Cross-References

Rural cooperative utilities, Title 35, ch. 18.

85-1-514. Power generation negotiation process. (1) A person with federal authorization or, if authorization is not required, a person planning to construct a small-scale hydroelectric generation facility at a state-owned project shall submit an application to the department for hydroelectric development at the state-owned project site.

(2) Upon receipt of a written application under subsection (1), the department shall make an investigation and prepare a report on the value of

the power site, the plans of development submitted by the applicant, and any other matters relating to the proposed development that the department considers necessary for the proper development of hydroelectric generation at the state-owned project.

(3) Upon completion of the report, the department may negotiate with the applicant for the acquisition of the necessary interest in the state-owned project to effectively allow the applicant to operate a hydroelectric facility. The terms, conditions, and compensation agreed to must include but not be limited to the full market value of the interest disposed of by the department. Full market value must be determined by the department in the report completed under subsection (2).

(4) An applicant under subsection (1) shall pay to the department all costs incurred by the department in carrying out its duties under this section. The department and the applicant shall contract for the provision of services and payment of fees required by this section prior to accepting an application under subsection (2).

(5) Nothing in this section requires the department to construct, rehabilitate, reconstruct, operate, or otherwise maintain the state-owned project to accommodate the hydroelectric facility except as negotiated under subsection (3).

History: En. Sec. 3, Ch. 293, L. 1985; amd. Sec. 439, Ch. 418, L. 1995.

Cross-References

Disposal of property by Department, 85-1-210.

Part 6

Renewable Resource Grant and Loan Program

Part Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Protection and improvement of environment — remedies to prevent unreasonable depletion, Art. IX, sec. 1, Mont. Const.

Coal severance tax trust fund, Art. IX, sec. 5, Mont. Const.

Fund structure, 17-2-102.

Bond issues, Title 17, ch. 5.

85-1-601. Purpose and policies. (1) The legislature finds and declares that in order that the people of Montana may enjoy the benefits of the state's water and other renewable resources, the state shall establish this long-term renewable resource grant and loan program providing financial and administrative assistance to private for-profit, private, nonprofit, local government, state government, and tribal government entities for renewable resource grant and loan projects.

(2) The purpose of the renewable resource grant and loan program is to further the state's policies, set forth in 85-1-101, regarding the conservation, development, and beneficial use of water resources and to invest in renewable natural resource projects that will preserve for the citizens of Montana the economic and other benefits of the state's natural heritage.

(3) The legislature recognizes the value of Montana's renewable resources; therefore, it is appropriate that a portion of the taxes and other revenue from nonrenewable resources be invested in the replacement of nonrenewable resources with the development of renewable resource projects

that will continue to provide tax and other revenue and will preserve for the citizens the economic and other benefits of the state's natural heritage.

(4) The conservation, development, management, and preservation of water and other renewable resources are high priorities because a large portion of Montana's present and future economy is based either directly or indirectly on the wise use of these resources.

(5) Developments supported by this part may not significantly diminish the quality of existing public resources, such as land, air, fish, wildlife, and recreation opportunities.

(6) This renewable resource grant and loan program supports, in part, the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the "state water plan". In making funding recommendations for grants and loans, the department shall give preference to projects that will implement state water plan priorities if, in all other respects, the proposed projects are equal in public benefit and technical feasibility.

History: En. Sec. 1, Ch. 505, L. 1981; amd. Sec. 9, Ch. 478, L. 1993; amd. Sec. 2, Ch. 436, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 436 near end of (1) inserted reference to tribal government entities; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Protection and improvement of environment — remedies to prevent unreasonable depletion, Art. IX, sec. 1, Mont. Const.

85-1-602. Objectives. (1) The department shall administer a renewable resource grant and loan program to enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

(a) feasibility, design, research, and resource assessment studies;

(b) preparation of construction, rehabilitation, or production plans; and

(c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

(a) development of natural resource-based recreation;

(b) development of offstream and tributary storage;

(c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113; and development of state, tribal, and federal water projects; and

(d) advancement of farming practices that reduce agricultural chemical use.

(3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan.

History: En. Sec. 2, Ch. 505, L. 1981; amd. Sec. 1, Ch. 116, L. 1989; amd. Sec. 4, Ch. 543, L. 1991; amd. Sec. 10, Ch. 478, L. 1993; amd. Sec. 3, Ch. 436, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 436 at end of (1)(c) substituted "state, tribal, and federal water projects" for "state-tribal, state-federal, and state-tribal-federal water projects". Amendment effective July 1, 1997.

Cross-References

State water plan, 85-1-203.

85-1-603. Renewable resource loan debt service fund created — coal severance tax allocated — renewable resource loan loss reserve fund created. (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 0.95% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35;

(ii) any principal and accrued interest under 85-1-613(5)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the renewable resource grant and loan program state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613(5)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss.

History: En. Sec. 4, Ch. 505, L. 1981; amd. Sec. 35, Ch. 298, L. 1983; amd. Sec. 1, Ch. 6, Sp. L. March 1986; amd. Sec. 2, Ch. 2, L. 1987; amd. Sec. 2, Ch. 491, L. 1989; amd. Sec. 11, Ch. 478, L. 1993; amd. Sec. 6, Ch. 442, L. 1995; amd. Sec. 1, Ch. 332, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 332 in (1)(b)(ii) substituted "85-1-613(5)(a)" for "85-1-613(4)(a)"; and in (2)(b) substituted "85-1-613(5)(b)" for "85-1-613(4)(b)". Amendment effective April 21, 1997.

Applicability: Section 4, Ch. 332, L. 1997, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for existing projects that were initiated after July 1, 1995.

(2) [This act] applies to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for new projects initiated after [the effective date of this act]." Effective April 21, 1997.

Cross-References

State water plan, 85-1-203.

85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all revenue of the works and other money as provided in 85-1-332;

(b) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) the resource indemnity and ground water assessment tax proceeds as provided in 15-38-106(2)(b).

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated to the special revenue account under 15-38-202(2)(a)(ii) must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection (3)(c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants.

History: En. Sec. 5, Ch. 505, L. 1981; amd. Sec. 2, Ch. 149, L. 1983; amd. Sec. 36, Ch. 298, L. 1983; amd. Sec. 10, Ch. 512, L. 1985; amd. Sec. 2, Ch. 6, Sp. L. March 1986; amd. Sec. 2, Ch. 116, L. 1989; amd. Sec. 3, Ch. 491, L. 1989; amd. Sec. 5, Ch. 543, L. 1991; amd. Sec. 9, Ch. 659, L. 1991; amd. Sec. 12, Ch. 478, L. 1993; amd. Sec. 3, Ch. 577, L. 1995; amd. Sec. 297, Ch. 42, L. 1997; amd. Sec. 5, Ch. 444, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (2)(e) substituted "resource indemnity and ground water assessment tax proceeds" for "resource indemnity tax proceeds"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 444 in (2)(e) substituted "resource indemnity and ground water assessment tax proceeds" for "resource indemnity tax proceeds"; in (3)(a) substituted "to the special revenue account under 15-38-202(2)(a)(ii)" for "under 15-38-202(2)(b)(iii)"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Contracts with United States, 85-1-221.

Montana Dam Safety Act, Title 85, ch. 15.

85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance. (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the renewable resource grant and loan program state special revenue account, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to $10 million for loans from the renewable resource grant and loan program state special revenue account and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government.

History: En. Sec. 6, Ch. 505, L. 1981; amd. Sec. 3, Ch. 149, L. 1983; amd. Sec. 37, Ch. 298, L. 1983; amd. Sec. 11, Ch. 512, L. 1985; amd. Sec. 13, Ch. 478, L. 1993; amd. Sec. 1, Ch. 50, L. 1997; amd. Sec. 4, Ch. 436, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 50 in (4), in first sentence, substituted "$10 million" for "$1 million"; and made minor changes in style. Amendment effective March 13, 1997.

Chapter 436 in (1), at end of first sentence, inserted reference to tribal government; in middle of (3) inserted reference to tribal government; in (4), in second sentence, inserted reference to tribal government; inserted (6) providing additional grant and loan conditions; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Legislative Finance Committee, Title 5, ch. 12, part 2.

Declaration of emergency, 10-3-302.

85-1-606. Grants and loans to private persons. (1) To encourage the construction and development of water-related projects, the department may make grants and loans to private persons from funds appropriated from the renewable resource grant and loan program state special revenue account and may make loans to private persons from the renewable resource loan proceeds account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water-related projects, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select the water-related projects for which grants or loans may be awarded.

History: En. Sec. 7, Ch. 505, L. 1981; amd. Sec. 38, Ch. 298, L. 1983; amd. Sec. 14, Ch. 478, L. 1993.

85-1-607. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. Sec. 8, Ch. 505, L. 1981.

85-1-608. Applications for grants and loans to private persons. (1) A private person may apply for a grant or loan to finance a water-related project to be constructed, developed, and operated in Montana.

(2) An application for a loan or grant must be in the form prescribed by rule and contain or be accompanied by any information necessary to adequately describe the proposed project and necessary for evaluation of the proposed project under the criteria set out in 85-1-609 and 85-1-610.

History: En. Sec. 9, Ch. 505, L. 1981; amd. Sec. 15, Ch. 478, L. 1993.

85-1-609. Eligibility for a loan or grant to a private person. The department may not award a grant or loan to a private person unless the department finds, based on the application and the department's investigation and evaluation of the proposal, that:

(1) the proposed water-related project:

(a) will promote, enhance, or advance the purpose, policies, and objectives of the renewable resource grant and loan program;

(b) will be constructed, developed, and operated within the state of Montana;

(c) will be economically feasible. (A project is economically feasible if the project benefits exceed the project costs. The department shall consider only quantifiable benefits and costs in calculating economic feasibility.)

(d) will be an efficient use of natural resources, including water, energy, land, and air. (An efficient use is one that minimizes waste.)

(e) will provide multipurpose facilities to the extent practicable;

(f) will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(g) will provide associated public benefits in addition to any private benefits the project may provide; and

(h) is needed to accomplish the purpose for which the project is proposed;

(2) the applicant has adequate financial resources to construct, operate, and maintain the project. The department shall consider financial resources from any source for which the applicant has qualified, including a renewable resource grant or loan.

(3) the applicant holds or can acquire all necessary lands, other than public lands, and interests in the lands and water rights necessary for the construction, operation, and maintenance of the proposed project;

(4) if the application is for a loan, the applicant is creditworthy and able and willing to enter into a contract with the department for loan repayment and construction or development of the proposed project; and

(5) if the application is for a grant, the applicant is able and willing to enter into a contract with the department for construction or development of the proposed project.

History: En. Sec. 10, Ch. 505, L. 1981; amd. Sec. 16, Ch. 478, L. 1993.

Cross-References

State water plan, 85-1-203.

85-1-610. Evaluation of grants and loans to private persons. The department shall consider the following criteria and preferences in evaluating applications and selecting the recipients of grants and loans for water-related projects that are eligible for funding under 85-1-609:

(1) The extent and desirability of the public benefits that will be provided must be considered.

(2) A water-related project that will be used as part of a family farm must be given preference. A family farm is one devoted primarily to agriculture under the ownership and operation of a resident Montana family.

(3) A water-related project that will utilize or develop water reserved under 85-2-316 must be given preference.

(4) The department, to the extent practicable, shall attempt to achieve geographic balance in the promotion of renewable resource grant and loan projects through the awarding of loans and grants to private persons.

(5) The extent to which the project will effectively utilize water resources and promote the conservation and efficient use of the water resource must be evaluated and considered.

(6) Projects that could not be accomplished without the assistance of a loan or grant must be given preference.

(7) The department shall give due consideration to any other factor that, in the department's judgment, is important to the evaluation of the project in light of the purposes, policies, and objectives of the renewable resource grant and loan program.

History: En. Sec. 11, Ch. 505, L. 1981; amd. Sec. 12, Ch. 512, L. 1985; amd. Sec. 17, Ch. 478, L. 1993.

Cross-References

State water plan, 85-1-203.

85-1-611. Department to solicit views. The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, commissions, and other subdivisions of the state, including local political subdivisions, of a tribal government, of the federal government, and of other interested and affected persons.

History: En. Sec. 12, Ch. 505, L. 1981; amd. Sec. 18, Ch. 478, L. 1993; amd. Sec. 5, Ch. 436, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 436 near end inserted reference to tribal government. Amendment effective July 1, 1997.

85-1-612. Rulemaking authority. The department shall adopt rules:

(1) prescribing a reasonable application fee and the form and content of applications for grants and loans;

(2) governing the application of the criteria for awarding loans and grants to private persons;

(3) providing for the servicing of loans including arrangements for obtaining security interests and the establishment of reasonable fees or charges to be made;

(4) describing the terms and conditions for making grants and loans, the security instruments, and the agreements necessary;

(5) describing the ranking criteria used to evaluate and prioritize grants to governmental entities; and

(6) specifying any other procedures necessary to accomplish the objectives of the renewable resource grant and loan program.

History: En. Sec. 13, Ch. 505, L. 1981; amd. Sec. 19, Ch. 478, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2,

or Title 85, chapter 6, part 1, may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan would exceed the lesser of $300,000 or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project.

History: En. Sec. 14, Ch. 505, L. 1981; amd. Sec. 4, Ch. 149, L. 1983; amd. Sec. 39, Ch. 298, L. 1983; amd. Sec. 4, Ch. 491, L. 1989; amd. Sec. 20, Ch. 478, L. 1993; amd. Sec. 2, Ch. 332, L. 1997; amd. Sec. 6, Ch. 436, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 332 in (1), near beginning, inserted "that is not a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1"; inserted (2) providing guidelines for loans to certain water users' associations or ditch companies from the renewable resource grant and loan program special revenue account or the renewable resource loan proceeds account; inserted (6) providing "A loan made under this part may not be used for the cost of operation and maintenance of a project"; and made minor changes in style. Amendment effective April 21, 1997.

Chapter 436 near beginning of (3) inserted reference to tribal government; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 4, Ch. 332, L. 1997, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for existing projects that were initiated after July 1, 1995.

(2) [This act] applies to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for new projects initiated after [the effective date of this act]." Effective April 21, 1997.

Cross-References

Fund structure, 17-2-102.

Renewable resource grant and loan program state special revenue account, 85-1-604.

Renewable resource loan proceeds account, 85-1-617.

85-1-614. Limits on grants from renewable resource grant and loan program state special revenue account. (1) The maximum grant awarded to a private person may not exceed the lesser of:

(a) 5% of the estimated total funds potentially available in the renewable resource grant and loan state special revenue account for public and private grants in the biennium in which the grant will be made; or

(b) 25% of the total project cost.

(2) This part does not limit the amount of grant funds that may be appropriated by the legislature to fund a state or local government project.

History: En. Sec. 15, Ch. 505, L. 1981; amd. Sec. 40, Ch. 298, L. 1983; amd. Sec. 21, Ch. 478, L. 1993.

Cross-References

Renewable resource grant and loan program state special revenue account, 85-1-604.

85-1-615. Security interests — purchase, operation, and resale of encumbered property. (1) The state has a lien upon a project constructed with money from the renewable resource grant and loan state special revenue account or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604(3)(d) or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower.

History: En. Sec. 16, Ch. 505, L. 1981; amd. Sec. 41, Ch. 298, L. 1983; amd. Sec. 5, Ch. 491, L. 1989; amd. Sec. 22, Ch. 478, L. 1993; amd. Sec. 3, Ch. 332, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 332 in (1), in second sentence, inserted "shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements"; and made minor changes in style. Amendment effective April 21, 1997.

Applicability: Section 4, Ch. 332, L. 1997, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for existing projects that were initiated after July 1, 1995.

(2) [This act] applies to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for new projects initiated after [the effective date of this act]." Effective April 21, 1997.

Cross-References

Liens, Title 71, ch. 3.

Renewable resource grant and loan program state special revenue account, 85-1-604.

Renewable resource loan proceeds account, 85-1-617.

85-1-616. Administration of loans and grants. The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the renewable resource grant and loan program state special revenue account established in 85-1-604.

History: En. Sec. 17, Ch. 505, L. 1981; amd. Sec. 5, Ch. 149, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 23, Ch. 478, L. 1993.

85-1-617. Issuing renewable resource bonds — renewable resource loan proceeds account. (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell renewable resource bonds of the state in the amount and manner it considers necessary and proper to finance the renewable resource grant and loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of renewable resource bonds may be issued by the board of examiners, upon request of the department, at public or private sale, in denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at a time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of a banking institution or institutions within or outside the state that the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of renewable resource bonds, the interest rates and the maturities and mandatory redemption provisions contained in the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the renewable resource loan debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in

accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and interest coupons appurtenant to the bonds or notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds and notes issued and sold.

(5) There is created a renewable resource loan proceeds account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the renewable resource loan proceeds account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the renewable resource loan debt service fund and the renewable resource loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the renewable resource loan debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board of examiners, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners.

History: En. Sec. 18, Ch. 505, L. 1981; amd. Sec. 6, Ch. 149, L. 1983; amd. Secs. 42, 55, Ch. 298, L. 1983; amd. Sec. 13, Ch. 512, L. 1985; amd. Sec. 3, Ch. 6, Sp. L. March 1986; amd. Sec. 6, Ch. 491, L. 1989; amd. Sec. 24, Ch. 478, L. 1993.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Bond issues, Title 17, ch. 5.

85-1-618. Restrictions on use of bond proceeds. Renewable resource bond proceeds may be used only for the purpose of making loans as provided in the renewable resource grant and loan program or for purchasing liens and operating property as provided in 85-1-615.

History: En. Sec. 19, Ch. 505, L. 1981; amd. Sec. 7, Ch. 491, L. 1989; amd. Sec. 25, Ch. 478, L. 1993.

85-1-619. Debt service fund — pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the renewable resource loan debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the renewable resource loan debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the renewable resource loan debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource bonds, and for bonds issued prior to 1985, to accumulate a reserve for the further security of the payments.

(3) After the reserve provided for in subsection (2) for bonds issued prior to 1985 has been accumulated in the renewable resource loan debt service fund, money at any time received in the renewable resource loan debt service fund in excess of that amount must be transferred by the treasurer to the renewable resource grant and loan program state special revenue account.

History: **En. Sec. 20, Ch. 505, L. 1981; amd. Sec. 43, Ch. 298, L. 1983; amd. Sec. 14, Ch. 512, L. 1985; amd. Sec. 26, Ch. 478, L. 1993.**

85-1-620. Renewable resource refunding bonds. (1) The board of examiners may issue refunding bonds at times and in amounts, if any, as may be necessary to pay principal or interest due that cannot be paid from funds then on hand in the renewable resource loan debt service fund. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities of the outstanding bonds determined by the board of examiners to be necessary to assure that the funds then pledged to the renewable resource loan debt service fund will be sufficient for payment of principal and interest due in subsequent years. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable on the outstanding bonds.

(2) Refunding bonds may not be issued and sold more than 3 months before all of the bonds refunded mature or are called for redemption unless the proceeds of the refunded bonds, with any other funds in the renewable resource loan debt service fund that are needed and available for the purpose or securities purchased from proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow, for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds, so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) New debt may not be created by the issuance of refunding bonds in accordance with this section, but the refunding bonds must evidence the debt previously created and must be secured by the pledge of the full faith and credit and taxing powers of the state and secured in the same manner as the bonds refunded by other provisions of this part.

History: **En. Sec. 21, Ch. 505, L. 1981; amd. Sec. 44, Ch. 298, L. 1983; amd. Sec. 27, Ch. 478, L. 1993.**

Cross-References

Bond issues, Title 17, ch. 5.

Renewable resource loan debt service fund, 85-1-603.

85-1-621. Report. The department shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted to the environmental quality council established in 5-16-101.

History: En. Sec. 22, Ch. 505, L. 1981; amd. Sec. 19, Ch. 573, L. 1985; amd. Sec. 58, Ch. 112, L. 1991; amd. Sec. 49, Ch. 349, L. 1993; amd. Sec. 28, Ch. 478, L. 1993; amd. Sec. 71, Ch. 545, L. 1995.

85-1-622. Penalty. No member, officer, attorney, or other employee of the board or the department may, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this part other than the salary, fee, or other compensation as he may receive as a member, officer, attorney, or employee. A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 or be imprisoned for not to exceed 2 years, or both.

History: En. Sec. 23, Ch. 505, L. 1981.

85-1-623. Repealed. Sec. 3, Ch. 437, L. 1995.

History: En. Sec. 1, Ch. 507, L. 1981; amd. Sec. 45, Ch. 298, L. 1983; amd. Sec. 15, Ch. 512, L. 1985; amd. Sec. 8, Ch. 491, L. 1989; amd. Sec. 29, Ch. 478, L. 1993.

85-1-624. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed $10 million.

History: En. Sec. 1, Ch. 437, L. 1995.

85-1-625 through 85-1-630 reserved.

85-1-631. Water storage state special revenue account created — revenues allocated — appropriations from account. (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202.

(3) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(4) Deposits to the water storage state special revenue account are to be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(5) The purpose of the water storage state special revenue account is to provide money for loans and grants exclusively for water storage projects, including the purchase or lease of property; planning, feasibility, and design studies; and other costs related to construction, rehabilitation, expansion, and modification of water storage projects.

(6) The department shall administer this section as an integral part of the renewable resource grant and loan program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other renewable resource grants and loans.

(7) The following preferences must be considered in ranking proposals for water storage grants and loans:

(a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;

(b) second preference is for the improvement or expansion of existing water storage projects; and

(c) third preference is for the development of new water storage projects.

History: En. Sec. 8, Ch. 659, L. 1991; amd. Sec. 30, Ch. 478, L. 1993.

Cross-References

Water storage policy, Title 85, ch. 1, part 7.

Part 7

Water Storage Policy

85-1-701. Short title. This part may be cited as the "Water Storage Policy Act".

History: En. Sec. 1, Ch. 659, L. 1991.

85-1-702. Purpose. The purpose of this part is to define the role of water storage in solving water management problems and, if water storage projects provide the best solutions to those problems, to facilitate the development of the projects.

History: En. Sec. 2, Ch. 659, L. 1991.

85-1-703. Water storage policy. (1) The legislature recognizes that water resource needs are growing, existing water facilities are aging and in need of repair, and new water storage projects have become more difficult to complete. Other types of action will be needed to solve many emerging problems, but if water storage is the best way to meet growing water needs and solve problems, then it should be actively pursued.

(2) In determining the best solution for a particular water management problem, the state shall:

(a) carefully define the problem;

(b) identify all options to solve the problem, including water storage;

(c) determine whether water is physically and legally available to solve the problem; and

(d) select the option that best meets the following criteria:

(i) technical feasibility;
(ii) financial feasibility;
(iii) economic feasibility;
(iv) political feasibility;
(v) legal feasibility; and
(vi) environmental feasibility.

History: En. Sec. 3, Ch. 659, L. 1991.

85-1-704. Prioritization of water storage projects — governor's report. (1) The governor shall submit to each regular session of the legislature a report identifying specific water storage projects proposed for development, including the rehabilitation of existing projects and new project proposals. The report must contain:

(a) a list of water storage project priorities;

(b) an implementation strategy for each priority project that identifies the resources (including specific budget requests), government actions, and other actions needed to accomplish the project; and

(c) a progress report on the development of water storage projects during the previous 2 years.

(2) In setting priorities among new water storage projects, the governor shall consider whether a project:

(a) solves a severe water problem;

(b) provides multiple uses and benefits;

(c) provides for public uses;

(d) shows strong evidence of broad citizen support;

(e) is able to obtain nonstate sources of funding;

(f) protects and seeks to enhance social, ecological, cultural, and aesthetic values;

(g) improves local and state economic development;

(h) could resolve Indian and federal reserved water rights issues;

(i) supports water conservation activities; and

(j) promotes the use of water reserved under Montana law.

(3) In setting priorities among water storage rehabilitation projects, the governor shall consider whether the project:

(a) is needed to protect public safety;

(b) has impacts if not repaired or rehabilitated; and

(c) accomplishes the goals listed in subsections (2)(a) through (2)(j).

(4) In establishing budget priorities for the allocation of state water storage development funds:

(a) first preference must be given to projects that resolve threats to life and property posed by high-hazard facilities that are in an unsafe condition;

(b) second preference must be given to projects that improve or expand existing water storage facilities; and

(c) third preference must be given to the planning and construction of new water storage facilities.

History: En. Sec. 4, Ch. 659, L. 1991.

Cross-References

Water storage state special revenue account — allocation, 85-1-631.

Part 8

Lease Management Program

Part Cross-References

State lands — agricultural, grazing, and other surface leases, Title 77, ch. 6.

85-1-801. Statement of policy. It is the policy of the state that in the interest of accomplishing a self-supporting program from the leasing of project lands, the project lands must be appraised by the department at least once during the term of each lease. The purpose of the appraisals is to determine the lease value of project lands and the general condition of the lands.

History: **En. Sec. 1, Ch. 301, L. 1995.**

85-1-802. Leases authorized. (1) The department may lease all project lands appurtenant to a state-owned water project for purposes that the department considers appropriate.

(2) A lease of project lands may not exceed 10 years.

(3) All cabin site leases issued prior to July 1, 1994, expire March 31, 1996.

History: **En. Sec. 2, Ch. 301, L. 1995.**

85-1-803. Rulemaking. The department may adopt rules necessary to implement and administer the leasing of project lands. These rules may include but are not limited to rules governing the:

(1) growing of crops or grazing of livestock;

(2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

(3) acquisition and use of water on project lands;

(4) leasing of project lands, except for lease renewals and transfers, by competitive bidding and the establishment of bid procedures and bid deposits;

(5) process for giving notice and for cancellation, termination, and renewal of leases, including existing leases on project lands;

(6) general form of the lease and the form and conditions of a bond when the department considers a bond necessary;

(7) changes or modifications in lease conditions or lease use; and

(8) placement and removal of improvements directly related to the necessary use of the project lands.

History: **En. Sec. 3, Ch. 301, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-1-804. Appraisal of project lands — adjustment of lease fee. The department shall appraise project lands owned by the department and shall maintain records of the appraisals. Not less than once during the term of a lease, the department shall reappraise the project lands and adjust the lease fee accordingly. The department may not increase a lease fee for a current lessee more than 2% a year during any period of 10 consecutive years.

History: **En. Sec. 4, Ch. 301, L. 1995.**

85-1-805. Full market value required. The department shall determine the full market value of project lands. The department may not accept a bid that is below full market value.

History: **En. Sec. 5, Ch. 301, L. 1995.**

85-1-806. Withdrawal of lands from leasing. The department may withdraw project lands from leasing for a period of time as the department determines to be in the best interest of the state.

History: **En. Sec. 6, Ch. 301, L. 1995.**

85-1-807. Assignment of leases — subleasing not allowed. (1) A lease of project lands may be assigned on forms prescribed by the department. An assignment is not binding on the department unless the assignment is filed with and approved by the department. An assignment fee must be paid to the department at the time of filing the assignment.

(2) The department may not approve a contingent or collateral assignment of a lease.

(3) A lease may not be subleased.

History: En. Sec. 7, Ch. 301, L. 1995.

85-1-808. Changes in lease use not authorized — cancellation. (1) During the term of a lease, the use of the project lands may not be changed. A change in the use of the lands automatically voids the lease.

(2) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if known would have prevented its issuance in the form or to the party issued;

(b) subleasing project lands;

(c) placing of unauthorized improvements on project lands;

(d) using the lands for purposes other than those authorized by the lease;

(e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the lands;

(f) nonpayment of rental fees;

(g) violation of a lease condition;

(h) other causes that in the judgment of the department make the cancellation of the lease necessary in order to do justice to all parties concerned or to protect the interests of the state.

(3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

History: En. Sec. 8, Ch. 301, L. 1995.

85-1-809. Improvements authorized — no compensation — removal. (1) A lessee of project lands may place on the lands a reasonable amount of improvements directly related to the necessary use of the lands as provided in the lease.

(2) The department is not liable to pay compensation to a lessee or a former lessee for improvements made to project lands.

(3) A former lessee is responsible to reclaim project lands to the condition existing prior to the placement of the improvements. If the former lessee fails to remove the improvements from the land within 60 days from the date of the expiration of the lease, all of the improvements become the property of the department unless the department for good cause extends the time for removal of the improvements. The department may require a former lessee to remove improvements made by the former lessee from project lands at the former lessee's expense.

History: En. Sec. 9, Ch. 301, L. 1995.

85-1-810. No pledge or mortgage of leasehold interest. A lessee of project lands may not pledge the lease or mortgage a leasehold interest in the project lands.

History: En. Sec. 10, Ch. 301, L. 1995.

85-1-811. Project lands lease account. There is established a project lands lease account within the state special revenue fund of the state treasury. All lease fees collected under this part must be deposited in the account to pay the department's costs and expenses in administering this part.

History: En. Sec. 11, Ch. 301, L. 1995.

CHAPTER 2

SURFACE WATER AND GROUND WATER

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Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Smith River Management Act, Title 23, ch. 2, part 4.

Part 1
General Provisions

85-2-101. Declaration of policy and purpose. (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter.

(2) A purpose of this chapter is to implement Article IX, section 3(4), of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of streamflows, and for ground water recharge.

(4) Pursuant to Article IX, section 3(1), of the Montana constitution, it is further the policy of this state and a purpose of this chapter to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

(5) It is the intent of the legislature that the statutory determinations for issuing new water use permits and authorizing changes do not require the adjudication of all water rights in the source of supply. The legislature recognizes the unique character and nature of water resources of the state. Because water is a resource that is subject to use and reuse, such as through return flows, and because at most times all water rights on a source will not be exercised to their full extent simultaneously, it is recognized that an adjudication is not a water availability study. Consequently, the legislature has provided an administrative forum for the factual investigation into whether water is available for new uses and changes both before and after the completion of an adjudication in the source of supply. To allow for orderly permitting in the absence of a complete adjudication in the source of supply, permits issued under this chapter are provisional. A provisional permit is subject to reduction, modification, or revocation by the department as provided in 85-2-313 upon completion of the general adjudication.

(6) It is the intent of the legislature that the state, to fulfill its constitutional duties and to exercise its historic powers and responsibilities to its citizens living on and off reservations, comprehensively adjudicate existing water rights and regulate water use within the state. It is further the legislature's intent that the state, to the fullest extent possible, retain and exercise its authority to regulate water use and provide forums for the protection of water rights, including federal non-Indian and Indian water rights, and resolve issues concerning its authority over water rights and

permits, both prior to and after the final adjudication of water rights. In furtherance of this legislative intent:

(a) all permits issued are provisional, and it is the intent of the legislature that this status provide enforceable legal protection for existing rights; and

(b) any judicial determination of the state's authority to issue provisional permits on or off reservations should be decided in the appropriate state forum.

History: En. Sec. 2, Ch. 452, L. 1973; R.C.M. 1947, 89-866; amd. Sec. 1, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 inserted (5) concerning provisional permitting in absence of complete adjudication of water rights in source of supply; inserted (6) concerning legislative intent that state retain and exercise authority to regulate water use; and made minor changes in style. Amendment effective May 1, 1997.

Retroactive Applicability: Section 24, Ch. 497, L. 1997, provided: "[Section 1] [85-2-101] applies retroactively, within the meaning of 1-2-109, to all permits and change authorizations issued by the department of natural resources and conservation after July 1, 1973."

Cross-References

Rights for useful or beneficial purpose recognized and confirmed, Art. IX, sec. 3, Mont. Const.

Water quality, Title 75, ch. 5.

Aquatic ecosystem protections, Title 75, ch. 7.

Policy considerations, 85-1-101.

Interpretation of title, 85-1-103.

State water plan, 85-1-203.

Department powers over state waters, 85-1-204.

Adjudication of water rights, Title 85, ch. 2, part 2.

Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

Utilization of water, Title 85, ch. 2, part 4.

Ground water, Title 85, ch. 2, part 5.

Indian and federal water rights — water rights within Indian reservations, Title 85, ch. 2, part 7.

85-2-102. *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, lease water in accordance with 85-2-436; or

(d) in the Upper Clark Fork River basin, maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-102. *(Effective July 1, 1999)* **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(16) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(17) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(18) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(19) "Water division" means a drainage basin as defined in 3-7-102.

(20) "Water judge" means a judge as provided for in Title 3, chapter 7.

(21) "Water master" means a master as provided for in Title 3, chapter 7.

(22) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(23) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)*

85-2-102. *(Effective July 1, 2005)* **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

History: En. Sec. 3, Ch. 452, L. 1973; amd. Sec. 1, Ch. 192, L. 1974; amd. Sec. 1, Ch. 485, L. 1975; amd. Sec. 1, Ch. 416, L. 1977; amd. Sec. 7, Ch. 460, L. 1977; R.C.M. 1947, 89-867; amd. Sec. 1, Ch. 327, L. 1979; amd. Sec. 1, Ch. 552, L. 1979; amd. Sec. 29, Ch. 697, L. 1979; amd. Sec. 1, Ch. 573, L. 1985; amd. Sec. 1, Ch. 658, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 2, Ch. 308, L. 1991; amd. Sec. 1, Ch. 543, L. 1991; amd. Sec. 1, Ch. 805, L. 1991; amd. Sec. 1, Ch. 370, L. 1993; amd. Sec. 1, Ch. 629, L. 1993; amd. Sec. 440, Ch. 418, L. 1995; amd. Sec. 4, Ch. 487, L. 1995; amd. Sec. 2, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: (All three versions) Chapter 497 in definition of existing right inserted "or "existing water right"" and inserted second sentence concerning water rights reserved under federal law and water rights created under state law; inserted definition of state water reservation; in definition of watercourse, near end, substituted "constructed" for "manmade"; and made minor changes in style. Amendment effective May 1, 1997.

85-2-103. Measurement of water. (1) After July 1, 1899, a cubic foot of water (7.48 gallons) per second of time shall be the legal standard for the measurement of water in this state.

(2) Where water rights expressed in statutory or miner's inches have been granted, 100 statutory or miner's inches shall be considered equivalent to a flow of 2.5 cubic feet (18.7 gallons) per second, 200 statutory or miner's inches shall be considered equivalent to a flow of 5 cubic feet (37.4 gallons) per second, and this proportion shall be observed in determining the equivalent flow represented by any number of statutory or miner's inches.

(3) The provisions of this section shall not affect or change the measurement of water decreed by a court prior to July 1, 1899, but such decreed water shall be measured according to the law in force at the time such decree was made and entered.

History: (1)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 4854, Rev. C. 1907; re-en. Sec. 7107, R.C.M. 1921; re-en. Sec. 7107, R.C.M. 1935; Sec. 89-817, R.C.M. 1947; (2)Ap. p. Sec. 2, p. 126, L. 1899; re-en. Sec. 4855, Rev. C. 1907; re-en. Sec. 7108, R.C.M. 1921; re-en. Sec. 7108, R.C.M. 1935; Sec. 89-818, R.C.M. 1947; Ap. p. Sec. 10, Ch. 185, L. 1907; re-en. Sec. 4877, Rev. C. 1907; re-en. Sec. 7132, R.C.M. 1921; re-en. Sec. 7132, R.C.M. 1935; Sec. 89-843, R.C.M. 1947; (3)En. Sec. 3, p. 126, L. 1899; re-en. Sec. 4856, Rev. C. 1907; re-en. Sec. 7109, R.C.M. 1921; re-en. Sec. 7109, R.C.M. 1935; Sec. 89-819, R.C.M. 1947; R.C.M. 1947, 89-817, 89-818, 89-819, 89-843(part).

Cross-References

Statement of claim, 85-2-224.

Final decree, 85-2-234.

Priority, 85-2-401.

85-2-104. Repealed. Sec. 24, Ch. 573, L. 1985.

History: En. Sec. 2, Ch. 552, L. 1979.

85-2-105. Environmental quality council — water policy duties. (1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council shall:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

(4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties.

History: En. Sec. 20, Ch. 573, L. 1985; amd. Sec. 59, Ch. 112, L. 1991; amd. Sec. 31, Ch. 478, L. 1993; amd. Sec. 441, Ch. 418, L. 1995; amd. Sec. 72, Ch. 545, L. 1995; amd. Sec. 1, Ch. 45, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 45 in (3)(d), at end, substituted "water information system maintained by the natural resource information system under 90-15-305" for "water resources data management system maintained by the department under 85-2-112".

Cross-References

Appointment and composition of joint subcommittees, 5-5-211.

Environmental Quality Council, Title 5, ch. 16.

85-2-106 through 85-2-110 reserved.

85-2-111. Department powers. The department may:

(1) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

(2) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

History: En. Sec. 4, Ch. 452, L. 1973; R.C.M. 1947, 89-868(2).

Cross-References

Federal revenue and endowments, Title 17, ch. 3.

Contracts with United States, 85-1-221.

85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113 subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319

History: En. Sec. 4, Ch. 452, L. 1973; R.C.M. 1947, 89-868(1); amd. Sec. 30, Ch. 697 L. 1979; amd. Sec. 3, Ch. 268, L. 1981; amd. Sec. 1, Ch. 448, L. 1983; amd. Sec. 17, Ch. 573 L. 1985; amd. Sec. 442, Ch. 418, L. 1995; amd. Sec. 2, Ch. 45, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 45 deleted former (4) that read: "(4) in cooperation with other state agencies, institutions, colleges, and universities, establish and maintain a centralized and efficient water resources data management system sufficient to make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and existing and potential demand. All other state agencies, institutions, and colleges and universities shall cooperate with the department in the development and maintenance of this system"; and made minor changes in style.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Adjudication of water rights, Title 85, ch. 2 part 2.

Department assistance to Water Judges 85-2-243.

Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319 for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4).

History: En. Sec. 5, Ch. 452, L. 1973; amd. Sec. 1, Ch. 238, L. 1974; amd. Sec. 2, Ch. 485, L. 1975; R.C.M. 1947, 89-869; amd. Sec. 1, Ch. 292, L. 1979; amd. Sec. 31, Ch. 697, L. 1979; amd. Sec. 2, Ch. 448, L. 1983; amd. Sec. 2, Ch. 543, L. 1991; amd. Sec. 2, Ch. 805, L. 1991; amd. Sec. 443, Ch. 418, L. 1995.

Cross-References

Emergency or temporary rules, 2-4-303.
Water Courts, Title 3, ch. 7.
Water quality, Title 75, ch. 5.
Department assistance to Water Judges, 85-2-243.
Waste and contamination of ground water prohibited, 85-2-505.

85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4), petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, interference, or violation.

(4) The department must attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). The attempts to obtain voluntary compliance under this subsection may not exceed 3 working days.

History: En. Sec. 33, Ch. 452, L. 1973; R.C.M. 1947, 89-897; amd. Sec. 32, Ch. 697, L. 1979; amd. Sec. 1, Ch. 677, L. 1991.

Cross-References

Water Courts — jurisdiction, Title 3, ch. 7, part 5.

When preliminary injunction may be granted, 27-19-201.

Department powers over state waters, 85-1-204.

Waste and contamination of ground water prohibited, 85-2-505.

85-2-115. Entry on land. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this chapter, including but not limited to entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works, and other inspections to ascertain whether or not persons are complying with this chapter. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: En. Sec. 34, Ch. 452, L. 1973; R.C.M. 1947, 89-898.

Cross-References

General duty of care, 28-1-201.

85-2-116. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

History: En. Sec. 35, Ch. 452, L. 1973; amd. Sec. 9, Ch. 460, L. 1977; R.C.M. 1947, 89-899.

Cross-References

Attorney General — general duties, 2-15-501.

Office of County Attorney, Title 7, ch. 4, part 27.

Negotiation with federal government, 85-2-703.

85-2-117. Water right records for filing with local clerk and recorder. Upon payment of a fee established pursuant to 85-2-113, a county clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right transfer certificates issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4.

History: En. Sec. 12, Ch. 805, L. 1991.

85-2-118 through 85-2-120 reserved.

85-2-121. Administrative proceedings. The Montana Administrative Procedure Act governs administrative proceedings conducted under parts 1 through 4 of this chapter, except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

History: En. Sec. 36, Ch. 452, L. 1973; amd. Sec. 13, Ch. 485, L. 1975; amd. Sec. 9, Ch. 416, L. 1977; R.C.M. 1947, 89-8-100.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Evidence, Title 26.

85-2-122. Penalties. (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) Fines collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

History: En. Sec. 37, Ch. 452, L. 1973; R.C.M. 1947, 89-8-101; amd. Sec. 21, Ch. 573, L. 1985; amd. Sec. 2, Ch. 677, L. 1991; amd. Sec. 444, Ch. 418, L. 1995.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

When no penalty specified, 46-18-212.

85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124 and 85-2-241, all fees and penalties collected under this chapter shall be deposited in the water right appropriation account established in 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

History: En. Sec. 38, Ch. 452, L. 1973; R.C.M. 1947, 89-8-102; amd. Sec. 3, Ch. 448, L. 1983; amd. Sec. 2, Ch. 24, L. 1985; amd. Sec. 59, Ch. 557, L. 1987; amd. Sec. 3, Ch. 677, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fund structure, 17-2-102.

85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within 90 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus 1/2 of 1% of the estimated cost over $20 million and up to $100 million; plus 1/4 of 1% of the estimated cost over $100 million and up to $300 million; plus 1/8 of 1% of the estimated cost over $300 million. The fee shall be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the

Montana Major Facility Siting Act and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(6) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed $2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement.

History: En. 89-8-102.2 by Sec. 1, Ch. 356, L. 1975; amd. Sec. 1, Ch. 117, L. 1977; R.C.M. 1947, 89-8-102.2; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 448, L. 1983; amd. Sec. 6, Ch. 573, L. 1985.

Cross-References

Protection and improvement of environment, Art. IX, sec. 1, Mont. Const.

Contracts, Title 28, ch. 2, 3.

Environmental impact statements, Title 75, ch. 1, part 2.

Montana Major Facility Siting Act, Title 75, ch. 20.

85-2-125. *(Temporary)* **Recovery of attorney fees by prevailing party.** (1) (a) In the Upper Clark Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.

(b) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable attorney fees.

(2) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees. *(Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)*

85-2-125. *(Effective July 1, 2005)* **Recovery of attorney fees by prevailing party.** If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

History: En. 89-8-100.1 by Sec. 11, Ch. 416, L. 1977; R.C.M. 1947, 89-8-100.1; amd. Sec. 5, Ch. 487, L. 1995.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

85-2-126 through 85-2-130 reserved.

85-2-131. Application for change of watercourse name. (1) All applications for the change of name of any watercourse or natural source of water supply, including natural streams, dry coulees, springs, lakes, rivers, or creeks which lie wholly within the limits of one county must be made to the district court of the county where the watercourse or other natural source of water supply, the name of which is proposed to be changed, or some part thereof is situated. The petition must state in ordinary and concise language:

(a) a description of the watercourse or other natural source of water supply, the name of which is proposed to be changed, identifying the same as near as may be by natural monuments;

(b) the present name of the stream or other natural source of water supply and the name to which the petitioners desire the same to be changed, together with the reasons for the desired change of name;

(c) the names of all persons or corporations owning real estate abutting upon or water rights upon the same whose titles appear of record in the office of the county clerk and recorder in the county in which the watercourse or other natural source of water supply, or some part thereof, is situated.

(2) The petition must be signed by not less than 10 owners of real property abutting upon said watercourse or other natural source of water supply or owning water rights upon the same.

(3) The insufficiency of the petition in any of the above respects shall not be held to defeat the jurisdiction of the court.

History: En. Sec. 1, Ch. 101, L. 1911; re-en. Sec. 9968, R.C.M. 1921; re-en. Sec. 9968, R.C.M. 1935; R.C.M. 1947, 93-100-6.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-132. Change of watercourse name — public notice. When such petition is filed in the district court, the court or the judge thereof shall designate some newspaper of general circulation in the county, such as is most likely to give all parties interested notice of the proceedings, and shall order that notice be published therein as hereinafter provided, and in his discretion he may require any other and further notice that to him may seem reasonable and shall fix a time at which objections to the granting of the petition for the change of name shall be heard. A copy of the petition, together with a notice of the time set for hearing objections thereto, shall be published in the newspaper designated by the court or judge for that purpose at least once a week for 4 successive weeks, and such other and further notice of the proceedings shall be given as the court or judge may in his discretion require.

History: En. Sec. 2, Ch. 101, L. 1911; re-en. Sec. 9969, R.C.M. 1921; re-en. Sec. 9969, R.C.M. 1935; R.C.M. 1947, 93-100-7.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-2-133. Change of watercourse name — hearing. At the time set for hearing or at any time prior thereto, objections may be filed by any person who can, in such objections, show to the court or judge good reason against such change of name. The application and the objections must be heard at such time as the court or judge may appoint. On hearing, the court or judge may examine on oath any of the petitioners, remonstrants, objectors, or other persons touching the application and may make an order changing the name or dismissing the application as to the court or judge may seem right and proper.

History: En. Sec. 3, Ch. 101, L. 1911; re-en. Sec. 9970, R.C.M. 1921; re-en. Sec. 9970, R.C.M. 1935; R.C.M. 1947, 93-100-8.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-2-134. Change of watercourse name — judgment to be filed with county clerk. If the change of name be ordered, a copy of the judgment, duly certified by the clerk of the court, shall be filed with the county clerk and recorder of the county in which the watercourse or other natural source of water supply is situated, and the clerk of the court shall, annually, in the month of January, make a return to the office of the secretary of state of all changes of names made in the district court of his county under this section.

History: En. Sec. 4, Ch. 101, L. 1911; re-en. Sec. 9971, R.C.M. 1921; re-en. Sec. 9971, R.C.M. 1935; R.C.M. 1947, 93-100-9.

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-135 through 85-2-140 reserved.

85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program through appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck reservoir, if an agreement between the department and the federal government concerning the acquisition of water and the sharing of revenue with the state is in effect;

(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail reservoir if and as long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of revenue with the state from one or more of these reservoirs; and

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and the sharing of revenue with the state.

(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses may not exceed 50,000 acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations in subsection (7). In making a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or

more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. The determination of desirability must be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8) The department shall for any agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor.

History: En. Sec. 13, Ch. 573, L. 1985; amd. Sec. 445, Ch. 418, L. 1995.

Cross-References

Department powers over state waters, 85-1-204.

Department powers and duties, 85-2-113.

Restrictions on right to appropriate waters, 85-2-301.

Reserved water not subject to leasing program, 85-2-316.

85-2-142 through 85-2-149 reserved.

85-2-150. Chronically dewatered watercourse — identification. (1) Using the factors in subsection (2) as guidelines, the department, in consultation with other agencies and groups, shall identify chronically dewatered watercourses or portions of watercourses.

(2) The factors the department shall consider when identifying chronically dewatered watercourses or portions of watercourses include but are not limited to the:

(a) extent, duration, and frequency of the dewatering;

(b) impact of the dewatering on fish, wildlife, or other natural resources;

(c) particular species of fish and wildlife impacted;

(d) impact of dewatering on other off-stream uses, including but not limited to agricultural, industrial, municipal, and recreational uses;

(e) probable cause of the dewatering;

(f) existence of temporary or final decrees;

(g) history, if any, of conflict among water rights holders on the watercourse;

(h) practicality and reasonableness of installing measuring devices on diversions along the watercourse; and

(i) likelihood that the installation of measuring devices will significantly help to:

(i) solve the chronically dewatered condition of the watercourse; or

(ii) resolve conflicts among water rights holders on the watercourse.

History: En. Sec. 3, Ch. 543, L. 1991.

Cross-References

Department powers and duties, 85-2-113.

Part 2
Adjudication of Water Rights

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

85-2-201 through 85-2-210. Repealed. Sec. 37, Ch. 697, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

85-2-201. En. Sec. 6, Ch. 452, L. 1973; R.C.M. 1947, 89-870.

85-2-202. En. Sec. 7, Ch. 452, L. 1973; R.C.M. 1947, 89-871.

85-2-203. En. Sec. 8, Ch. 452, L. 1973; amd. Sec. 1, Ch. 265, L. 1974; amd. Sec. 3, Ch. 485, L. 1975; R.C.M. 1947, 89-872.

85-2-204. En. Sec. 9, Ch. 452, L. 1973; amd. Sec. 4, Ch. 485, L. 1975; R.C.M. 1947, 89-873.

85-2-205. En. Sec. 10, Ch. 452, L. 1973; amd. Sec. 5, Ch. 485, L. 1975; R.C.M. 1947, 89-874.

85-2-206. En. Sec. 11, Ch. 452, L. 1973; amd. Sec. 6, Ch. 485, L. 1975; amd. Sec. 2, Ch. 416, L. 1977; R.C.M. 1947, 89-875.

85-2-207. En. Sec. 12, Ch. 452, L. 1973; amd. Sec. 7, Ch. 485, L. 1975; R.C.M. 1947, 89-876.

85-2-208. En. Sec. 13, Ch. 452, L. 1973; amd. Sec. 3, Ch. 416, L. 1977; R.C.M. 1947, 89-877.

85-2-209. En. Sec. 14, Ch. 452, L. 1973; R.C.M. 1947, 89-878.

85-2-210. En. Sec. 15, Ch. 452, L. 1973; R.C.M. 1947, 89-879.

85-2-211. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 20, Ch. 697, L. 1979; amd. Sec. 2, Ch. 629, L. 1993.

85-2-212. Order by supreme court. (1) The Montana supreme court shall within 10 days of the filing of the petition by the attorney general issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the department no later than June 30, 1983. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or ground water sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River basin in a declaration filed pursuant to the order of the department of natural resources and conservation or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana supreme court shall issue the order called for in subsection (1) with a shorter claim filing period of not less than 1 year, subject to extension not beyond June 30, 1983, by the Montana supreme court upon petition of the attorney general, in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged.

History: En. Sec. 16, Ch. 697, L. 1979.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Indian and federal water rights, Title 85, ch. 2, part 7.

85-2-213. Notice of order — additional filing period. (1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To ensure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1996, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, April and October 1995, and April 1996, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, April and October 1995, and April 1996, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state and to be maintained in that location through July 1, 1996.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after July 1, 1993, until July 1, 1996.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any claim of existing right not filed with the department before April 30, 1982, may be filed by physically filing it with the department on or before July 1, 1996, or sending it by United States mail, postmarked on or before July 1, 1996. Additionally, the notice must indicate that under 85-2-226, a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221.

History: En. Sec. 17, Ch. 697, L. 1979; amd. Sec. 3, Ch. 629, L. 1993.

Cross-References

Due process of law guaranteed, Art. II, sec. 17, Mont. Const.

Water Judges, Title 3, ch. 7, part 2.

Property taxes — Treasurer to publish notice — manner of publication, 15-16-101.

Publication of legal notices, Title 18, ch. 7, part 2.

85-2-214. Commencement of action. (1) The action for the adjudication of all existing water rights under this part, part 7, and Title 3, chapter 7, is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. As to each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within his water division and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.

History: **En. Secs. 6, 20, Ch. 697, L. 1979.**

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Water Judges, Title 3, ch. 7, part 2.

85-2-215. Consolidation of matters. The water judge may consolidate all matters concerning the determination and interpretation of existing water rights within the water judge's division in any combination or groups of claims or matters for joint hearings or proceedings conducted by the water judge or water master in any location within the division. The water judge may make such consolidations as are necessary to administer the requirements of this part and part 7 in adjudicating claims of existing water rights.

History: **En. Sec. 6, Ch. 697, L. 1979.**

Cross-References

Water Courts, Title 3, ch. 7.

85-2-216. Venue for water rights determinations. All matters concerning the determination and interpretation of existing water rights shall be brought before or immediately transferred to the water judge in the proper water division unless witnesses have been sworn and testimony has been taken by a district court prior to the date of the Montana supreme court order as provided in 85-2-212.

History: **En. Sec. 6, Ch. 697, L. 1979.**

Cross-References

Water divisions, Title 3, ch. 7, part 1.

Water Courts — jurisdiction, Title 3, ch. 7, part 5.

Proper place of trial — venue, Title 25, ch. 2.

85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, 2005, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 2005, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section.

History: **En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 4, Ch. 268, L. 1981; amd. Sec. 1, Ch. 667, L. 1985; amd. Sec. 1, Ch. 358, L. 1987; amd. Sec. 2, Ch. 784, L. 1991; amd. Sec. 1, Ch. 44, L. 1997; amd. Sec. 3, Ch. 497, L. 1997.**

Compiler's Comments

1997 Amendments: Chapter 44 in third sentence, in two places, substituted "July 1, 2005" for "July 1, 1999"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 497 in second and sixth sentences, near middle, inserted "federal non-Indian and Indian"; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

Reserved Water Rights Compact Commission, 2-15-212.

85-2-218. Process and criteria for designating priority basins or subbasins. (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus making adjudication of other rights in the basin or subbasin important for timely issuance of preliminary or final decrees;

(c) the basin or subbasin's location would help ensure efficient use of department and water court resources; and

(d) the adjudication process in the basin or subbasin is nearing the issuance of a decree.

(2) The water judge may designate a basin for priority adjudication upon petition of 100 or more persons who have filed claims within the basin, or he may designate a subbasin for priority adjudication upon petition of a majority of persons who have filed claims within the subbasin. The basin or subbasin shall receive priority, however, only if it meets one or more of the criteria in subsection (1).

(3) If adjudication work in one or more of the priority basins or subbasins has been completed or has been suspended for good cause, the water judge may select other basins or subbasins for priority adjudication, based on the criteria in subsection (1).

History: En. Sec. 10, Ch. 651, L. 1987.

85-2-219 and 85-2-220 reserved.

85-2-221. Filing of claim of existing water right — filing late claim. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1, 1993, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on or before July 1, 1996, on forms provided by the department. This section is not intended to

prevent the filing of a late claim in addition to a claim of an existing water right filed on or before April 30, 1982, if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim and is not an abandoned right. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. The claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) a late claim must be incorporated into the adjudication, subject to all proceedings that have taken place prior to the date of filing;

(b) the person filing a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982;

(c) a person filing a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July 1, 1993, except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982, or to claim protection for the right represented in the late claim under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law;

(d) if the water judge, following objection under 85-2-233, finds that the right represented in the late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a right represented in a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim is, in addition, subordinate to:

(i) rights represented in all valid, timely filed claims; and

(ii) rights represented in a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted.

History: En. Sec. 11, Ch. 697, L. 1979; amd. Sec. 4, Ch. 629, L. 1993.

Cross-References

Existing water rights, Art. IX, sec. 3, Mont. Const.

General duties of Clerk of District Court, 3-5-501.

Department duties, 85-2-112.

85-2-222. Exemptions. Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of 85-2-221(1). Such claims may, however, be voluntarily filed.

History: En. Sec. 11, Ch. 697, L. 1979.

85-2-223. Public recreational uses. The department of fish, wildlife, and parks shall exclusively represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this part, provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under this part. The foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

History: En. Sec. 12, Ch. 697, L. 1979.

Cross-References

Recreation, Title 23, ch. 2.

Beneficial use defined, 85-2-102.

Department of Fish, Wildlife, and Parks — powers and duties, 87-1-201.

85-2-224. Statement of claim. (1) The statement of claim for each right arising under the laws of the state and for each right reserved under the laws of the United States which has been actually put to use shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) Any claimant filing a statement of claim under subsection (1) shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

(3) Any statement of claim for rights reserved under the laws of the United States which have not yet been put to use shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water claimed;

(d) the priority date claimed;

(e) the laws of the United States on which the claim is based; and

(f) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

History: En. Sec. 13, Ch. 697, L. 1979; amd. Sec. 2, Ch. 667, L. 1985.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Beneficial use defined, 85-2-102.

Measurement of water, 85-2-103.

Department duties, 85-2-112.

Irrigation districts, Title 85, ch. 7.

85-2-225. Filing fee — processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $150, which must be deposited in the water rights adjudication account for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2).

(b) The water judge shall assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection, which assessment must be deposited in the water rights adjudication account.

(c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before a date to be established by the department by rule, but no later than July 1, 1999.

History: En. Sec. 18, Ch. 697, L. 1979; amd. Sec. 1, Ch. 253, L. 1981; amd. Sec. 5, Ch. 268, L. 1981; amd. Sec. 5, Ch. 629, L. 1993.

Cross-References

Department powers and duties, 85-2-113.

85-2-226. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right.

History: En. Sec. 14, Ch. 697, L. 1979; amd. Sec. 6, Ch. 629, L. 1993.

Cross-References

Existing rights preserved, Art. IX, sec. 3, Mont. Const.

Complete list of conclusive presumptions, 26-1-601.

85-2-227. Claim to constitute prima facie evidence — relevant evidence — abandonment. (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) A water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

History: En. Sec. 15, Ch. 697, L. 1979; amd. Sec. 5, Ch. 604, L. 1989; amd. Sec. 2, Ch. 174, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 174 inserted (2) allowing consideration of all relevant evidence in determining existing water rights; inserted (3) allowing admissibility of evidence of abandonment; and made minor changes in style. Amendment effective March 28, 1997.

Cross-References

Evidence, Title 26.

85-2-228. Federal reserved water rights with priority date of July 1, 1973, or later — process and adjudication — purpose. (1) The purpose of this section is to ensure that a federal reserved water right with a priority date of July 1, 1973, or later is subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

(2) Under authority granted to the states by 43 U.S.C. 666, a federal reserved water right that has a priority date of July 1, 1973, or later and that is asserted by a federal agency is subject to the claim filing requirements and all other applicable requirements of the state water adjudication system provided for in Title 85, chapter 2, parts 2 and 7.

(3) At the request of a federal agency, the reserved water rights compact commission may negotiate to conclude a compact under Title 85, chapter 2, part 7, for a federal reserved water right with a priority date of July 1, 1973, or later.

(4) Whenever necessary, a water judge may reopen any decree issued pursuant to Title 85, chapter 2, to process the asserted or negotiated federal reserved water right.

History: (1)En. Sec. 1, Ch. 343, L. 1991; (2) through (4)En. Sec. 2, Ch. 343, L. 1991; amd. Sec. 4, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in (4), near end before "reserved water right", inserted "federal"; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Indian and federal water rights, Title 85, ch. 2, part 7.

85-2-229 and 85-2-230 reserved.

85-2-231. Temporary preliminary and preliminary decree. (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

(c) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree or preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to the master with instructions or modify the report and issue the preliminary decree.

History: En. Secs. 22, 27, Ch. 697, L. 1979; amd. Sec. 6, Ch. 268, L. 1981; amd. Sec. 1, Ch. 394, L. 1985; amd. Sec. 3, Ch. 667, L. 1985; amd. Sec. 1, Ch. 605, L. 1989; amd. Sec. 3, Ch. 174, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 174 substituted (2)(c) regarding issuance of an interlocutory decree for former language that read: "This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (1) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree"; in (3), at beginning, inserted "temporary", near middle, after "supply of water", inserted "or any claim or group of claims", near end, before "preliminary", inserted "temporary", and at end deleted "or portions of the same decree"; in (4), at beginning, inserted "temporary preliminary decree" and deleted second sentence that read: "The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency"; in (5), near middle of first sentence after "preliminary decree", deleted "set forth in subsections (1) and (3)"; deleted (6) that read: "(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree"; and made minor changes in style. Amendment effective March 28, 1997.

Cross-References

Water Judges, Title 3, ch. 7, part 2.

Duties of water masters, 3-7-311.

Reserved Water Rights Compact Commission, Title 85, ch. 2, part 7.

85-2-232. Availability of temporary preliminary or preliminary decree. (1) (a) The water judge shall send to the department a copy of a temporary preliminary decree or preliminary decree issued for a basin.

(b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to that person's successor as documented in the department's records.

(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed basin.

(d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person or to that person's successor as documented in the department's records, who has filed a declaration of an existing right.

(e) The water judge shall enclose with a notice required under subsections (1)(b) through (1)(d) an abstract of the disposition of the claimed or declared existing right of a person identified in this section or that person's successor as documented in the department's records.

(f) The notice of availability required under this section must also be served upon:

(i) those issued or having applied for and not having been denied a permit to beneficially use water within the decreed basin pursuant to Title 85, chapter 2, part 3;

(ii) those granted a reservation within the decreed basin pursuant to 85-2-316; or

(iii) other interested persons who request service of the notice from the water judge.

(2) The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary preliminary decree or preliminary decree. The certificate is conclusive evidence of legal notice of entry of decree.

(3) Notice of the availability of a preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.

(4) A person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge.

History: En. Sec. 22, Ch. 697, L. 1979; amd. Sec. 28, Ch. 526, L. 1983; amd. Sec. 2, Ch. 605, L. 1989; amd. Sec. 1, Ch. 197, L. 1995.

Cross-References

Duties of water masters, 3-7-311.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Department duties, 85-2-112.

85-2-233. Hearing on temporary preliminary decree or preliminary decree — procedure. (1) (a) For good cause shown and subject to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

(4) Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

(5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records that objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the notice required pursuant to this subsection must be borne by the moving party.

(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if

the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(10) The provisions of subsection (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence.

History: En. Sec. 23, Ch. 697, L. 1979; amd. Sec. 7, Ch. 268, L. 1981; amd. Sec. 4, Ch. 667, L. 1985; amd. Sec. 3, Ch. 605, L. 1989; amd. Sec. 2, Ch. 421, L. 1995; amd. Sec. 4, Ch. 174, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 174 in (1)(a), in introductory clause, substituted "subsection (9)" for "subsection (7)"; in (1)(c), at end of first sentence, inserted "issued before March 28, 1997"; inserted (1)(d) setting out allowable reasons for objecting or counterobjecting to a matter contained in a prior decree; in (2), at beginning, substituted "Objections" for "If a hearing is requested, the request"; inserted(3) regarding notification of parties whose claim received an objection; in (4), at beginning, substituted "Objections and counterobjections" for "The request for a hearing"; in (5)(a), in first sentence after "filing", substituted "counterobjections under subsection (3)" for "objections and upon timely receipt of a request for a hearing" and after "preliminary decree" substituted "or that person's successor as documented in the department records that objections and counterobjections have been filed" for "that a hearing has been requested" and in fifth sentence, after "conducted", inserted "in the same manner"; inserted (5)(b) allowing the parties to participate in settlement conferences or mediation; inserted (6) regarding public notice provisions; in (10) substituted "subsection (9)" for "subsection (7)"; and made minor changes in style. Amendment effective March 28, 1997.

Rule Reference: If the proposed amendment to Rule 53, M.R.Civ.P., is adopted, the reference to Rule 53(e) in this section will become Rule 53(a)(5). See proposed amendment comment to Rule 53 for text of proposed amendment.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.
Duties of water masters, 3-7-311.
Administrative proceedings, 85-2-121.

85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review.

History: En. Sec. 24, Ch. 697, L. 1979; amd. Sec. 5, Ch. 667, L. 1985; amd. Sec. 1, Ch. 438, L. 1987; amd. Sec. 1, Ch. 426, L. 1989; amd. Sec. 7, Ch. 629, L. 1993.

Cross-References

Enforcement of final decree, 3-7-212.

Water Courts — jurisdiction, Title 3, ch. 7, part 5.

85-2-235. Appeals. (1) A person whose existing rights and priorities are determined in a final decree may appeal the determination only if:

(a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; or

(b) the person's rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person.

(2) An interlocutory ruling by the water judge upon a question of law may be appealed by any party affected by the decision and who participated in the matter in which the ruling was issued.

History: En. Sec. 25, Ch. 697, L. 1979; amd. Sec. 4, Ch. 605, L. 1989; amd. Sec. 3, Ch. 421, L. 1995.

Cross-References

Enforcement of final decree, 3-7-212.

85-2-236. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

History: En. Sec. 26, Ch. 697, L. 1979; amd. Sec. 5, Ch. 448, L. 1983; amd. Sec. 1, Ch. 535, L. 1987; amd. Sec. 3, Ch. 805, L. 1991.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Procedure to record documents, 7-4-2617.

Department duties, 85-2-112.

Certificate of water rights — permit process, 85-2-315.

85-2-237. Reopening and review of decrees. (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

History: En. Sec. 1, Ch. 586, L. 1989; amd. Sec. 8, Ch. 629, L. 1993.

Compiler's Comments

Rule Reference: If the proposed amendment to Rule 53, M.R.Civ.P., is adopted, the reference to Rule 53(e) in this section will become Rule 53(a)(5). See proposed amendment comment to Rule 53 for text of proposed amendment.

85-2-238 through 85-2-240 reserved.

85-2-241. Water right adjudication account. There is established a water right adjudication account in the state special revenue fund of the state treasury. All fees collected under this section and 85-2-232 shall be deposited in the account to pay the expenses incurred by the state for administering this part, part 7, and Title 3, chapter 7.

History: En. Sec. 18, Ch. 697, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Fund structure, 17-2-102.

85-2-242. Repealed. Sec. 12, Ch. 651, L. 1987.

History: En. Sec. 19, Ch. 697, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

85-2-243. Department assistance to water judges. (1) The department, subject to the direction of the water judge, shall:

(a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated to it for the adjudication program by the legislature to carry out its function under subsection (1) and when that appropriation is expended then the department is no longer required to provide further assistance.

History: **En. Sec. 21, Ch. 697, L. 1979; amd. Sec. 8, Ch. 651, L. 1987.**

Cross-References

Department duties, 85-2-112.

Part 3

Appropriations, Permits, and Certificates of Water Rights

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

85-2-301. Right to appropriate — recognition and confirmation of permits issued after July 1, 1973. (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit in either of the following instances:

(i) for transport outside the following river basins:

(A) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(B) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(C) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(D) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(E) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(F) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota; or

(ii) whenever water in excess of 4,000 acre-feet a year and 5.5 cubic feet per second, for any use, is to be consumed.

(b) Water for these purposes or in these amounts may be leased from the department by any person under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(1); amd. Sec. 3, Ch. 573, L. 1985; amd. Sec. 5, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 inserted (4) concerning permitting actions of Department after July 1, 1973; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

State water plan, 85-1-203.
Appropriate defined, 85-2-102.
Beneficial use defined, 85-2-102.
Penalties, 85-2-122.
Priority, 85-2-401.

85-2-302. Application for permit. Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The applicant shall submit a correct and complete application. The department shall return a defective application for correction or completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(2); amd. Sec. 6, Ch. 448, L. 1983; amd. Sec. 12, Ch. 769, L. 1991; amd. Sec. 2, Ch. 370, L. 1993.

Cross-References

Department duties, 85-2-112.
Priority, 85-2-401.

85-2-303. Permit for conversion of nonproductive oil or gas well. A person who desires to convert a nonproductive oil or gas well to a water well shall file a notice of completion or apply for a permit, depending on the maximum appropriation of the well, as otherwise provided in this chapter. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(6); amd. Sec. 7, Ch. 448, L. 1983.

Cross-References

Abandoned oil and gas wells — reclamation, Title 82, ch. 10, part 4.

Measurement of water, 85-2-103.

Priority, 85-2-401.

Production of water from oil and gas wells — hearings — jurisdiction of Board, 85-2-510.

85-2-304. Appropriation by state board of land commissioners. The state board of land commissioners may, through the department, at its discretion, appropriate any available waters for use upon state lands and authorize the construction of irrigation works for these lands. The appropriation must be made in the same way and under the same laws as those governing the appropriation of water by individuals.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907; re-en. Sec. 1965, R.C.M. 1921; amd. Sec. 3, Ch. 280, L. 1965; amd. Sec. 113, Ch. 253, L. 1974; R.C.M. 1947, 81-2018; amd. Sec. 446, Ch. 418, L. 1995.

Cross-References

Development of state lands — types of developments, 77-1-605.

Department powers over state waters, 85-1-204.

Construction of works by Department, 85-1-206.

85-2-305. Appropriation permit for reservoir. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this chapter.

History: En. Sec. 25, Ch. 452, L. 1973; R.C.M. 1947, 89-889.

85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, “perennial flowing stream” means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(5), (7); amd. Sec. 1, Ch. 30, L. 1981; amd. Sec. 1, Ch. 160, L. 1981; amd. Sec. 1, Ch. 357, L. 1981; amd. Sec. 8, Ch. 448, L. 1983; amd. Sec. 1, Ch. 499, L. 1985; amd. Sec. 2, Ch. 535, L. 1987; amd. Sec. 1, Ch. 432, L. 1989; amd. Sec. 13, Ch. 769, L. 1991; amd. Sec. 4, Ch. 805, L. 1991; amd. Sec. 9, Ch. 629, L. 1993; amd. Sec. 447, Ch. 418, L. 1995.

Cross-References

Ground water, Title 85, ch. 2, part 5.

85-2-307. Notice of application. (1) (a) Upon receipt of a correct and complete application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.

History: En. Sec. 17, Ch. 452, L. 1973; amd. Sec. 9, Ch. 485, L. 1975; R.C.M. 1947, 89-881; amd. Sec. 2, Ch. 357, L. 1981; amd. Sec. 9, Ch. 448, L. 1983; amd. Sec. 29, Ch. 526, L. 1983; amd. Sec. 3, Ch. 535, L. 1987; amd. Sec. 3, Ch. 370, L. 1993.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Changes in appropriation rights, 85-2-402.

Transfer of appropriation rights, 85-2-403.

85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall timely file a correct and complete objection on a form prescribed by the department.

History: En. Sec. 18, Ch. 452, L. 1973; R.C.M. 1947, 89-882; amd. Sec. 10, Ch. 448, L. 1983; amd. Sec. 5, Ch. 805, L. 1991; amd. Sec. 4, Ch. 370, L. 1993.

Cross-References

Administrative proceedings, 85-2-121.

Changes in appropriation rights, 85-2-402.

Transfer of appropriation rights, 85-2-403.

85-2-309. Hearings on objections — jurisdiction. (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a public hearing on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322.

History: En. Sec. 19, Ch. 452, L. 1973; R.C.M. 1947, 89-883; amd. Sec. 6, Ch. 596, L. 1985; amd. Sec. 6, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in (2)(a) inserted second sentence concerning priority of certified controversies; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Duties of Chief Water Judge, 3-7-223.

Water Courts — jurisdiction, 3-7-501.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Administrative proceedings, 85-2-121.

85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the

application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124.

History: (1), (2)En. Sec. 20, Ch. 452, L. 1973; amd. Sec. 10, Ch. 485, L. 1975; amd. Sec. 5, Ch. 416, L. 1977; Sec. 89-884, R.C.M. 1947 (3)En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; Sec. 89-880, R.C.M. 1947; R.C.M. 1947, 89-880(3), 89-884; amd. Sec. 3, Ch. 357, L. 1981; amd. Sec. 1, Ch. 399, L. 1985; amd. Sec. 4, Ch. 535, L. 1987; amd. Sec. 10, Ch. 659, L. 1991.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Fees for environmental impact statements, 85-2-124.

Priority, 85-2-401.

85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a)(i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction

of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 21, Ch. 452, L. 1973; amd. Sec. 1, Ch. 156, L. 1975; amd. Sec. 1, Ch. 307, L. 1977; amd. Sec. 6, Ch. 416, L. 1977; R.C.M. 1947, 89-885; amd. Sec. 4, Ch. 357, L. 1981; amd. Sec. 11, Ch. 448, L. 1983; amd. Sec. 2, Ch. 706, L. 1983; amd. Sec. 4, Ch. 573, L. 1985; amd. Sec. 2, Ch. 432, L. 1989; amd. Sec. 1, Ch. 495, L. 1989; amd. Sec. 5, Ch. 370, L. 1993; amd. Sec. 1, Ch. 460, L. 1993; (7)En. Sec. 5, Ch. 460, L. 1993; amd. Sec. 448, Ch. 418, L. 1995; amd. Sec. 7, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in (1) inserted first, second, and third sentences concerning issuance of permit before adjudication of source of supply, lack of presumption that applicant cannot meet criteria, and alteration of terms and conditions of existing right; in (1)(a)(i) substituted "is water physically available" for "are unappropriated waters in the source of supply"; deleted former (1)(a)(i) that read: "(i) at times when the water can be put to the use proposed by the applicant"; deleted (1)(a)(iii) that read: "(iii) during the period in which the applicant seeks to appropriate, in the amount requested and that is reasonably available"; inserted (1)(a)(ii) concerning legal availability of water; in (1)(b) inserted "under an existing water right, a certificate, a permit, or a state water reservation" and inserted "In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied"; deleted former (1)(e) that read: "(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved"; deleted former (3)(b) that read: "(b) the rights of a prior appropriator will not be adversely affected"; in (4)(a), near middle of first sentence, inserted "federal non-Indian and Indian"; adjusted subsection references; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Declaration of policy and purpose, 85-2-101.

Definition of beneficial use, 85-2-102.

Controlled ground water areas — permits to appropriate, 85-2-508.

85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit. If a permit is not completed within the time limit specified or within an extension of that time limit the permit is void upon lapse of the time limit.

(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

History: En. Sec. 22, Ch. 452, L. 1973; R.C.M. 1947, 89-886; amd. Sec. 12, Ch. 448, L. 1983; amd. Sec. 5, Ch. 573, L. 1985; amd. Sec. 5, Ch. 535, L. 1987; amd. Sec. 6, Ch. 805, L. 1991; amd. Sec. 9, Ch. 370, L. 1993.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-313. Provisional permit. A permit issued prior to a final determination of existing water rights is provisional and is subject to that final determination. Upon petition, the amount of the appropriation granted in a provisional permit must be reduced, modified, or revoked by the department following a show cause hearing in which it is determined that reduction, modification, or revocation is necessary to protect and guarantee existing water rights determined in the final decree. Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration of the final decree in the affected basin or subbasin. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the permit would have been denied or modified if the final decree had been available to the department.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(4); amd. Sec. 8, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in second sentence, at beginning, inserted "Upon petition", inserted "or revoked by the department following a show cause hearing", and substituted "in which it is determined that reduction, modification, or revocation is" for "where" and inserted third sentence concerning determination of legal availability on consideration of final decree; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Priority, 85-2-401.

85-2-314. Revocation or modification of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit.

History: En. Sec. 23, Ch. 452, L. 1973; R.C.M. 1947, 89-887; amd. Sec. 13, Ch. 448, L. 1983.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.

Beneficial use defined, 85-2-102.

85-2-315. Certificate of water right. Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. The department shall review the certified statement and may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the permittee, and a duplicate shall be kept in the office of the department in Helena.

History: En. Sec. 24, Ch. 452, L. 1973; R.C.M. 1947, 89-888; amd. Sec. 14, Ch. 448, L. 1983; amd. Sec. 7, Ch. 805, L. 1991; amd. Sec. 10, Ch. 370, L. 1993.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Department duties, 85-2-112.

Certificate of water right, 85-2-236.

85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams may be allocated at the discretion of the department.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:

(a) A state water reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a state water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a state water reservation.

(b) Upon receiving a notice of intention to apply for a state water reservation, the department shall identify all potential state water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a state water reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete state water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing the application.

(d) The department may by order subordinate a state water reservation to a permit or a certificate for ground water development issued pursuant to this part if:

(i) the permit application or the notice of completion of ground water development was accepted by the department before the date of the order granting the reservation;

(ii) the effect of subordinating the reservation to one or more permits or certificates for ground water development does not interfere substantially with the purpose of the reservation; and

(iii) in the case of a certificate for ground water development, the reservant consents to the subordination.

(e) The department shall by order establish the relative priority of state water reservations approved under this section that have the same day of priority. A state water reservation may not adversely affect any rights in existence at that time.

(10) The department shall, periodically but at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains

its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.

History: En. Sec. 26, Ch. 452, L. 1973; amd. Sec. 11, Ch. 485, L. 1975; amd. Sec. 7, Ch. 416, L. 1977; R.C.M. 1947, 89-890; amd. Sec. 1, Ch. 689, L. 1979; amd. Sec. 1, Ch. 186, L. 1981; amd. Sec. 6, Ch. 357, L. 1981; amd. Sec. 15, Ch. 573, L. 1985; amd. Sec. 1, Ch. 197, L. 1987; amd. Sec. 1, Ch. 389, L. 1989; amd. Sec. 1, Ch. 515, L. 1991; amd. Sec. 6, Ch. 370, L. 1993; amd. Sec. 449, Ch. 418, L. 1995; amd. Sec. 1, Ch. 330, L. 1997; amd. Sec. 9, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 330 in (9)(d), after "permit", inserted "or a certificate for ground water development"; in (9)(d)(i), after "application", inserted "or the notice of completion of ground water development"; in (9)(d)(ii), after "permits", inserted "or certificates for ground water development"; inserted (9)(d)(iii) relating to consent to subordination of ground water development; and made minor changes in style. Amendment effective April 21, 1997.

Chapter 497 throughout section, in 16 places before reference to reservation, inserted "state water" and in 7 places, before "water reservation", inserted "state"; in (1), near middle, substituted "acquire a state water reservation" for "reserve waters"; in (11), in second sentence near beginning after "Reallocation of", deleted "reserved" and after "water" inserted "reserved pursuant to a state water reservation"; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Department powers and duties, 85-2-113.

Reservations within Missouri River Basin and Little Missouri River Basin, 85-2-331.

Suspension of action, 85-2-603.

Reservations, 85-2-605.

Conservancy districts — general provisions, Title 85, ch. 9, part 1.

85-2-317. Limitation on appropriation of ground water. (1) After July 1, 1991, the department may not approve a permit to appropriate ground water in excess of 3,000 acre-feet per year unless:

(a) the applicant proves and the department finds that the applicable criteria in 85-2-311 are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(2) Subsection (1) applies to any permit to appropriate ground water for which application has been made but which has not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by municipalities for municipal use or to appropriations for public water supplies as defined in 75-6-102 or to appropriations for the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity that applies for a permit to appropriate ground water, singularly or collectively, for the purpose of circumventing this section is punishable by a fine not exceeding $5,000.

History: En. Secs. 2, 4, Ch. 631, L. 1979; amd. Sec. 8, Ch. 805, L. 1991.

Cross-References

Public water supply, Title 75, ch. 6, part 1.

85-2-318. Water right appropriation account. There is established a water right appropriation account in the state special revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering and enforcing this part, part 1, part 4, and part 5 of chapter 2, Title 85, and Title 37, chapter 43.

History: En. Sec. 5, Ch. 357, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 535, L. 1987.

Cross-References

Fund structure, 17-2-102.

85-2-319. Permit action in highly appropriated basins or subbasins. (1) With regard to a highly appropriated basin or subbasin, the legislature may by law preclude permit applications or the department may by rule reject permit applications or modify or condition permits already issued.

(2) A rule may be adopted under this section only upon a petition that is signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department of environmental quality that alleges facts under subsection (2)(d). The petition must be in a form prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected;

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or

(d) in the case of a petition filed by the department of environmental quality:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department shall study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(5) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 17, Ch. 448, L. 1983; amd. Sec. 2, Ch. 460, L. 1993; (5)En. Sec. 5, Ch. 460, L. 1993; amd. Sec. 450, Ch. 418, L. 1995.

Cross-References

Petition for rulemaking, 2-4-315.
Department duties, 85-2-112.
Department powers and duties, 85-2-113.

85-2-320 reserved.

85-2-321. Milk River basin — suspension of action on permits — proposal — priority in adjudication process. (1) (a) In order to balance the need for the continued development of Montana's water and for protection of existing rights in the Milk River basin, the department may suspend action on a class of applications or may close a source in the basin and refuse to accept a class of applications, or both, for a permit under this part to appropriate from that source in the basin.

(b) Suspension or closure, or both, may only be proposed by the department.

(c) The proposal must state the source in the basin and class of applications for which suspension or closure, or both, is being proposed and any of the following allegations:

(i) that the frequency of occurrence of unappropriated waters is such that:

(A) any new appropriation from the source for the class of applications will adversely affect the rights of a prior appropriation from the source; or

(B) any new appropriation from the source for the class of applications will interfere unreasonably with another planned use or development for which a permit has been given or for which water has been reserved pursuant to this part in the source; or

(ii) that significant disputes or enforcement problems regarding priority of rights or amounts or duration of water in use by appropriators are in progress or will arise.

(2) After April 8, 1985, the chief water judge shall make issuance of a temporary preliminary decree in the Milk River basin the highest priority in the adjudication of existing water rights pursuant to Title 85, chapter 2, part 2.

History: En. Sec. 1, Ch. 524, L. 1981; amd. Sec. 2, Ch. 394, L. 1985; amd. Sec. 10, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in (1)(c)(i)(B), near end, inserted "pursuant to this part". Amendment effective May 1, 1997.

85-2-322. Hearing — order. (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under this section and 85-2-321. If the order suspends action on pending applications, the department shall notify the applicant that action on his application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306(3), 85-2-310, and 85-2-311 or continue the suspension under this section.

History: En. Sec. 2, Ch. 524, L. 1981; amd. Sec. 145, Ch. 370, L. 1987.

85-2-323. Request to modify suspension — order. (1) A person or public agency may request that an order be modified or revoked. The request must contain allegations supported by substantial evidence showing that the criteria in 85-2-311 can be met for an application or a class of applications from the source. If not so supported, the department may reject the request without a hearing.

(2) The department may by order after a hearing modify or revoke any order made as provided in 85-2-321 and 85-2-322 upon such notice and in such manner as is reasonable under the circumstances.

History: En. Sec. 3, Ch. 524, L. 1981.

85-2-324 through 85-2-326 reserved.

85-2-327. Terminated. Sec. 6, Ch. 352, L. 1991.

History: En. Sec. 1, Ch. 352, L. 1991.

85-2-328. Terminated. Sec. 6, Ch. 352, L. 1991.

History: En. Sec. 2, Ch. 352, L. 1991.

85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.

History: En. Sec. 1, Ch. 445, L. 1993; amd. Sec. 11, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in definition of application, near end before "water reservation", inserted "state". Amendment effective May 1, 1997.

85-2-330. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) emergency temporary appropriations as provided for in 85-2-113(3).

History: En. Sec. 2, Ch. 445, L. 1993; amd. Sec. 451, Ch. 418, L. 1995.

85-2-331. Reservations within Missouri River basin and Little Missouri River basin. (1) The state, an agency or political subdivision of the state, or the United States or an agency of the United States that desires to apply for a state water reservation in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for state water reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for state water reservations in the Missouri River basin above Fort Peck dam.

(b) The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for state water reservations in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The department shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) State water reservations approved by the department under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issued a permit under Title 85, chapter 2, part 3, prior to the granting of a state water reservation under this section, the department may subordinate the state water reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any state water reservation. If the department issued a certificate for ground water development under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the department may subordinate the reservation to the certificate if it finds that the subordination does not interfere substantially with the purpose of any reservation and the reservant consents to the subordination. The department shall by order establish the relative priority of applications approved under this section.

History: **En. Sec. 16, Ch. 573, L. 1985; amd. Sec. 3, HB 952, L. 1985; amd. Sec. 7, Ch. 535, L. 1987; amd. Sec. 1, Ch. 134, L. 1989; amd. Sec. 1, Ch. 303, L. 1993; amd. Sec. 452, Ch. 418, L. 1995; amd. Sec. 2, Ch. 330, L. 1997; amd. Sec. 12, Ch. 497, L. 1997.**

Compiler's Comments

1997 Amendments: Chapter 330 in (4) inserted third sentence relating to certificates for ground water development; and made minor changes in style. Amendment effective April 21, 1997.

Chapter 497 in (1), near middle of introductory clause, and in (3)(a) and (3)(b), near middle, substituted reference to state water reservations for reference to reservations of water; in (2) and (4), in five places, before reference to reservations, inserted "state water"; and made minor changes in style. Amendment effective May 1, 1997.

85-2-332 through 85-2-334 reserved.

85-2-335. Definitions. Unless the context requires otherwise, in 85-2-335 through 85-2-338, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(2) "Upper Clark Fork River basin" means the drainage area of the Clark Fork River and its tributaries above Milltown dam.

History: **En. Sec. 1, Ch. 741, L. 1991; amd. Sec. 1, Ch. 487, L. 1995.**

85-2-336. Basin closure — exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; or

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) Applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(4) The department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316.

History: En. Sec. 2, Ch. 741, L. 1991; amd. Sec. 453, Ch. 418, L. 1995; amd. Sec. 2, Ch. 487, L. 1995; amd. Sec. 13, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in (3), in first sentence, near beginning before "water reservations", inserted "state" and in second sentence, near beginning after "filing of a", inserted "state water"; and in (4), near middle, substituted "state water reservations" for "reservations of water". Amendment effective May 1, 1997.

Cross-References

Permit action in highly appropriated basins or subbasins, 85-2-319.

85-2-337. Ground water permit applications — report required. (1) During the period of basin closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin shall submit a report prepared by a professional engineer or hydrologist addressing the hydrologic connection between the source of the ground water and surface water. If the applicant fails to submit the report required in this section, the application is considered defective and must be processed pursuant to 85-2-302.

(2) Except as provided in subsection (3), the department may not issue a permit to appropriate ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the source of the ground water is not a part of or substantially or directly connected to surface water.

(3) The department may issue a permit to appropriate ground water if the application includes an augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and location to replace depletions to senior water rights.

History: En. Sec. 3, Ch. 741, L. 1991; amd. Sec. 1, Ch. 353, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 353 in (1), near middle of first sentence after "hydrologist", substituted "addressing the hydrologic connection between" for "verifying that" and near end, after "ground water", substituted "and" for "is not a part of or substantially or directly connected to"; at beginning of (2) inserted exception clause and language relating to preponderance of evidence and after "85-2-311" deleted "the department shall find, based on substantial credible evidence"; inserted (3) regarding an augmentation plan; and made minor changes in style. Amendment effective April 22, 1997.

85-2-338. Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan. (1) There is an Upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

(a) Each of the six conservation districts in the basin may appoint a member.

(b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agriculture;
(b) conservation districts;
(c) departments of state government;
(d) environmental organizations;
(e) industries;
(f) local governments;
(g) reservation applicants;
(h) utilities; and
(i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

(a) conservation district appointees shall initially serve for 4 years;

(b) county commissioner appointees shall initially serve for 2 years; and

(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;

(c) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

(d) provide a forum for all interests to communicate about water issues;

(e) provide education about water law and water management issues;

(f) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(h) assist in facilitating the resolution of water-related disputes;

(i) provide coordination with other basin management and planning efforts;

(j) advise government agencies about water management and permitting activities;

(k) consult with local governments within the Upper Clark Fork River basin; and

(l) report periodically to the legislature.

History: En. Sec. 4, Ch. 741, L. 1991; amd. Sec. 3, Ch. 487, L. 1995; amd. Sec. 2, Ch. 353, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 353 in (1), at beginning of second sentence after "The", inserted "steering committee has 22 members, who must be appointed as follows"; inserted (1)(a) and (1)(b) regarding membership from basin conservation districts and county commissions; in (1)(c), after "appoint the", substituted "remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2)" for "members of the committee, selecting them"; at beginning of (2) inserted "Steering committee members must be selected"; in (2)(a) substituted "agriculture" for "agricultural organizations"; in (2)(i), after "water", substituted "users not otherwise represented" for "user organizations"; inserted (3) regarding length and number of terms; inserted (4) regarding staggering of initial terms; deleted former (2)(b) that read: "(b) make recommendations to the 1997 legislature concerning representation, terms, and the method of appointing members to the steering committee"; and made minor changes in style. Amendment effective April 22, 1997.

85-2-339 reserved.

85-2-340. Definitions. Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

History: En. Sec. 1, Ch. 244, L. 1993; amd. Sec. 14, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in definition of application, near end before "water reservation", inserted "state". Amendment effective May 1, 1997.

85-2-341. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3).

History: En. Sec. 2, Ch. 244, L. 1993; amd. Sec. 454, Ch. 418, L. 1995; amd. Sec. 15, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in (1), near end before "reservation", inserted "state water". Amendment effective May 1, 1997.

85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam.

History: En. Sec. 1, Ch. 385, L. 1993; amd. Sec. 16, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 in definition of application, near end before "water reservation", inserted "state". Amendment effective May 1, 1997.

85-2-343. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or

(f) temporary emergency appropriations as provided for in 85-2-113(3).

History: En. Sec. 2, Ch. 385, L. 1993; amd. Sec. 455, Ch. 418, L. 1995; amd. Sec. 1, Ch. 441, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 441 near middle of (1), after "within the upper Missouri River basin", deleted "during the period from April 16, 1993"; inserted (2)(e) relating to use of water from Muddy Creek drainage; and made minor changes in style.

Part 4

Utilization of Water

85-2-401. Priority — recognition and confirmation of changes in appropriations issued after July 1, 1973. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department.

History: En. Sec. 27, Ch. 452, L. 1973; R.C.M. 1947, 89-891; amd. Sec. 33, Ch. 697, L. 1979; amd. Sec. 17, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 497 inserted (4) concerning recognition and confirmation of changes in appropriation rights actions of Department after July 1, 1973; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Existing rights to use of waters for any useful or beneficial purpose recognized and confirmed, Art. IX, sec. 3, Mont. Const.

Action for damage to water supply caused by metal mine, 82-4-355.

Declaration of policy and purpose, 85-2-101.

Final decree, 85-2-234.

85-2-402. *(Temporary)* **Changes in appropriation rights.** (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-402. *(Effective July 1, 1999)* **Changes in appropriation rights.** (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a temporary change authorization pursuant to 85-2-408 or for water use pursuant to 85-2-439 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water,

the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. *(Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)*

85-2-402. *(Effective July 1, 2005)* **Changes in appropriation rights.** (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 28, Ch. 452, L. 1973; amd. Sec. 3, Ch. 238, L. 1974; amd. Sec. 1, Ch. 338, L. 1975; amd. Sec. 8, Ch. 416, L. 1977; R.C.M. 1947, 89-892; amd. Sec. 15, Ch. 448, L. 1983; amd. Sec. 7, Ch. 573, L. 1985; amd. Sec. 8, Ch. 535, L. 1987; amd. Sec. 3, Ch. 432, L. 1989; amd. Sec. 2, Ch. 658, L. 1989; amd. Sec. 3, Ch. 308, L. 1991; amd. Sec. 9, Ch. 805, L. 1991; amd. Sec. 7, Ch. 370, L. 1993; amd. Sec. 3, Ch. 460, L. 1993; (14)En. Sec. 5, Ch. 460, L. 1993; amd. Sec. 2, Ch. 322, L. 1995; amd. Sec. 7, Ch. 487, L. 1995; amd. Sec. 3, Ch. 353, L. 1997; amd. Sec. 18, Ch. 497, L. 1997.

Compiler's Comments

1997 Amendments: (Temporary version and version effective July 1, 1999) Chapter 353 in (2)(d), after "85-2-408", inserted "or 85-2-439". Amendment effective April 22, 1997.

(All versions) Chapter 497 in (1) inserted first and second sentences concerning right to make change and lack of presumption in change proceeding; and in (2)(a), near beginning, substituted "change in appropriation right" for "use", before "water rights of other persons" inserted "use of the existing", near middle, after "persons or other", inserted "perfected or", after "a permit" inserted "or certificate", and at end substituted "a state water reservation has been issued under part 3" for "water has been reserved". Amendment effective May 1, 1997.

(Temporary version and version effective July 1, 1999) In (6), near middle of first sentence after "requirements for", inserted "federal non-Indian and Indian". Amendment effective May 1, 1997.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.
Measurement of water, 85-2-103.
Penalties, 85-2-122.
Definitions, 85-2-602.

85-2-403. Transfer of appropriation right. (1) The right to use water shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) Failure to comply with the provisions of 85-2-402 does not render a conveyance or reservation of a water right void, but the right may not be used until the department has approved the change. This subsection applies retroactively, within the meaning of 1-2-109, to a conveyance or reservation made after July 1, 1973.

History: En. Sec. 29, Ch. 452, L. 1973; amd. Sec. 4, Ch. 238, L. 1974; R.C.M. 1947, 89-893; amd. Sec. 16, Ch. 448, L. 1983; amd. Sec. 7, Ch. 674, L. 1983; amd. Sec. 9, Ch. 535, L. 1987.

Cross-References

Transfer of real property, Title 70, ch. 20.
Department duties, 85-2-112.
Penalties, 85-2-122.

85-2-404. *(Temporary)* **Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436, the use of water pursuant to 85-2-439, or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-404. *(Effective July 1, 1999)* **Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The use of water pursuant to 85-2-439 or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. *(Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)*

85-2-404. *(Effective July 1, 2005)* **Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter.

History: En. Sec. 30, Ch. 452, L. 1973; R.C.M. 1947, 89-894; amd. Sec. 1, Ch. 339, L. 1987; amd. Sec. 3, Ch. 658, L. 1989; amd. Sec. 2, Ch. 435, L. 1991; amd. Sec. 8, Ch. 487, L. 1995; amd. Sec. 5, Ch. 174, L. 1997.

Compiler's Comments

1997 Amendment: (All versions) Chapter 174 in (2), near end after "right", deleted "in whole or"; and in (5), near end before "determined", inserted "finally". Amendment effective March 28, 1997.

Cross-References

Abandonment by failure to file claim, 85-2-226.

Final decree in adjudication program, 85-2-234.

85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

History: En. Sec. 31, Ch. 452, L. 1973; R.C.M. 1947, 89-895.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Final decree, 85-2-234.

85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

History: En. Sec. 32, Ch. 452, L. 1973; amd. Sec. 12, Ch. 485, L. 1975; R.C.M. 1947, 89-896; amd. Sec. 34, Ch. 697, L. 1979; amd. Sec. 6, Ch. 604, L. 1989; amd. Sec. 6, Ch. 174, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 174 inserted (2)(a) allowing enforcement of a prior decree pending entry of another enforceable decree or adjudication; in (2)(b), in first sentence before "determined", inserted "conclusively", after "chapter" deleted "or when a basin is the subject of a temporary preliminary decree or preliminary decree, as modified after objections and hearings", after "controversy" deleted "or any person whose rights are or may be affected by enforcement of the decree", and at end, after "court", substituted "to certify the matter to the chief water judge" for "for relief", inserted second sentence regarding certification of existing rights, in third sentence, after "sought", substituted "shall retain exclusive jurisdiction" for "may" and after "appropriate" substituted "pending adjudication of the existing water rights certified to the water judge" for "to preserve property rights or the status quo pending the issuance of the final decree", and inserted fourth and fifth sentences regarding claim priority and return of the Water Court decision to District Court; in (3), at end of first sentence after "court", deleted "that issued the final decree"; in (4) inserted first sentence regarding enforceability of a preliminary or temporary preliminary decree and in second sentence, after first "decree", inserted "or preliminary decree"; deleted (5)(b) that read: "(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter"; and made minor changes in style. Amendment effective March 28, 1997.

Cross-References

Water Courts, Title 3, ch. 7.

Final decree, 85-2-234.

Appeals from final decree, 85-2-235.

Water Commissioners — power and duty to distribute water, 85-5-105.

85-2-407. Temporary changes in appropriation right. (1) An appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

History: **En. Sec. 1, Ch. 435, L. 1991; amd. Sec. 3, Ch. 322, L. 1995.**

Cross-References

Abandonment of appropriation right, 85-2-404.

85-2-408. *(Temporary)* **Temporary change authorization for instream flow — additional requirements.** (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(b) For the purpose of this section, "person" means and is limited to an individual, association, partnership, or corporation.

(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(4) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

(5) For the purpose of identifying and consulting with individuals or groups that may be affected by the proposed change authorization, the applicant shall, 30 days before submitting the application to the department, publish notice of the proposed change authorization in a local newspaper of general circulation in the county or counties affected.

(6) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

(7) A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights. *(Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)*

History: En. Sec. 1, Ch. 322, L. 1995.

85-2-409. *(Temporary)* **Temporary change validity — limitations.** All temporary changes authorized under 85-2-408 entered into prior to June 30, 2005, remain valid until the expiration date of the temporary change. A temporary change authorized under 85-2-408 may not be renewed or otherwise extended after June 30, 2005. *(Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)*

History: En. Sec. 4, Ch. 322, L. 1995.

85-2-410 reserved.

85-2-411. Water turned into natural channels. Water appropriated under an existing right or pursuant to this chapter may be turned into the natural channel of another stream or from a reservoir into the natural channel and withdrawn or diverted at a point downstream for beneficial use, but the waters of that stream may not thereby be diminished in quantity or deteriorated in quality to the detriment of a prior appropriator. Water stored in a reservoir under an existing right or pursuant to this chapter which is turned into a natural channel for withdrawal or diversion and beneficial use downstream shall not be considered a part of the natural flow of that stream.

History: En. 89-891.1 by Sec. 1, Ch. 103, L. 1974; R.C.M. 1947, 89-891.1.

Cross-References

Water quality, Title 75, ch. 5.

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

85-2-412. Return of surplus water to stream. In all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream and there shall, at any time, be a surplus of water so diverted, over and above what is actually and necessarily used by the prior appropriator, such person shall be required to turn and cause to flow back into the stream such surplus water. Upon failure to do so within 24 hours after demand being made upon him in writing, to him in person or at his place of abode, by any person having a right to the use of such surplus water, the person so diverting the same shall be liable to the person aggrieved for the damage resulting therefrom, in such sum as may be determined by court.

History: En. Sec. 1, p. 52, L. 1879; re-en. Sec. 731, p. 562, 5th Div. Rev. Stat. 1879; re-en. Sec. 1239, 5th Div. Comp. Stat. 1887; amd. Sec. 1884, Civ. C. 1895; re-en. Sec. 1, Ch. 56, L. 1907; Sec. 4844, Rev. C. 1907; re-en. Sec. 7097, R.C.M. 1921; re-en. Sec. 7097, R.C.M. 1935; R.C.M. 1947, 89-805.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Prevention of waste, 85-2-114.

85-2-413. Diversion of natural flow of waters — when permitted. Any person, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of his lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir or shall purchase or lease water from a reservoir owned by the department or another or shall otherwise acquire an interest in such reservoir or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which he desires to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of his lands in lieu of an equal amount of stored water; provided, however, that such exchange can be made without injury to said prior appropriators.

History: En. Sec. 1, Ch. 39, L. 1937; amd. Sec. 155, Ch. 253, L. 1974; R.C.M. 1947, 89-806.

Cross-References

Creation of irrigation districts — adjudicated streams, Title 85, ch. 7, part 2.

Creation of irrigation districts — common water supply, Title 85, ch. 7, part 3.

Stream protection, Title 87, ch. 5, part 5.

85-2-414. Conduction of water. The right to conduct water from or over the land of another for any beneficial use includes the right to raise any water by means of dams, reservoirs, or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor may be acquired upon payment of just compensation in the manner provided by law for the taking of private property for public use. If it is necessary to conduct the water across the right-of-way of any railroad, it shall be the duty of the owners of the ditch or flume to give 30 days' notice in writing to the owner or owners of such railway of their intention to construct a ditch or flume across the right-of-way of such railroad, the point at which the ditch or flume will cross the railroad, and the time when the construction of said ditch or flume will be made. If the owner or owners of such railroad or their agent fail to appear and attend at the time and place fixed in said notice, it shall be lawful for the owner or owners of the said flume or ditch to construct the same across the right-of-way of such railroad without further notice to said owner or owners of the railroad.

History: **En. Sec. 1894, Civ. C. 1895; re-en. Sec. 4857, Rev. C. 1907; re-en. Sec. 7110, R.C.M. 1921; re-en. Sec. 7110, R.C.M. 1935; R.C.M. 1947, 89-820.**

Cross-References

Eminent domain — assessing compensation, 70-30-302.

Construction across streams, highways, or other obstacles, 85-1-208.

85-2-415. Owners of water to sell surplus. Any person having the right to use, sell, or dispose of water and engage in using, selling, or disposing of the same who has a surplus of water not used or sold or any person having a surplus of water and the right to sell and dispose of the same is required, upon the payment or tender to the person entitled thereto of an amount equal to the usual and customary rates per inch or cubic foot of water per second, to convey and deliver to the person the surplus of unsold water or so much thereof for which the payment or tender has been made and shall continue to convey and deliver the same weekly so long as the surplus of unused or unsold water exists and the payment or tender is made as aforesaid.

History: **En. Sec. 1, p. 406, L. 1877; re-en. Sec. 742, 5th Div. Rev. Stat. 1879; re-en. Sec. 1263, 5th Div. Comp. Stat. 1887; re-en. Sec. 1897, Civ. C. 1895; re-en. Sec. 4860, Rev. C. 1907; re-en. Sec. 7113, R.C.M. 1921; re-en. Sec. 7113, R.C.M. 1935; amd. Sec. 6, Ch. 460, L. 1977; R.C.M. 1947, 89-823.**

Cross-References

Measurement of water, 85-2-103.

Prevention of waste, 85-2-114.

85-2-416. Duty of purchaser to dig ditches. Any person desiring to avail himself of the provisions of 85-2-415 must, at his own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by him and pay or tender to the person having the right to the use, sale, or disposal thereof an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct and putting in gates, gauges, or other proper and necessary appliances usual and customary in such cases, and until the same shall be done, the delivery of the surplus water shall not be required as provided in 85-2-415.

History: **En. Sec. 2, p. 406, L. 1877; re-en. Sec. 743, 5th Div. Rev. Stat. 1879; re-en. Sec. 1264, 5th Div. Comp. Stat. 1887; re-en. Sec. 1898, Civ. C. 1895; re-en. Sec. 4861, Rev. C. 1907; re-en. Sec. 7114, R.C.M. 1921; re-en. Sec. 7114, R.C.M. 1935; R.C.M. 1947, 89-824.**

85-2-417. Enforcement of right to surplus. Any person constructing the necessary ditches, aqueducts, or flumes and making the payments or tenders hereinbefore provided is entitled to the use of so much of the surplus water as said ditches, flumes, or aqueducts have the capacity to carry and for which payment or tender is made and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

History: **En. Sec. 3, p. 406, L. 1877; re-en. Sec. 744, 5th Div. Rev. Stat. 1879; re-en. Sec. 1265, 5th Div. Comp. Stat. 1887; re-en. Sec. 1899, Civ. C. 1895; re-en. Sec. 4862, Rev. C. 1907; re-en. Sec. 7115, R.C.M. 1921; re-en. Sec. 7115, R.C.M. 1935; R.C.M. 1947, 89-825.**

Cross-References

Damages, Title 27, ch. 1, part 2.

Specific and preventive relief, Title 27, ch. 1, part 4.

85-2-418. Purchaser cannot sell surplus water. Nothing in 85-2-415 through 85-2-417 shall be so construed as to give the person acquiring the right to the use of water, as therein provided, the right to sell or dispose of the same after being so used by him or prevent the original owner or proprietor from retaking, selling, and disposing of the same in the usual and customary manner after it is so used as aforesaid.

History: **En. Sec. 4, p. 407, L. 1877; re-en. Sec. 745, 5th Div. Rev. Stat. 1879; re-en. Sec. 1266, 5th Div. Comp. Stat. 1887; re-en. Sec. 1900, Civ. C. 1895; re-en. Sec. 4863, Rev. C. 1907; re-en. Sec. 7116, R.C.M. 1921; re-en. Sec. 7116, R.C.M. 1935; R.C.M. 1947, 89-826.**

85-2-419. Salvaged water. It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water, as defined in 85-2-102, may retain the right to the salvaged water for beneficial use. Any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water for instream flow purposes must be in accordance with 85-2-436.

History: **En. Sec. 1, Ch. 308, L. 1991.**

85-2-420 reserved.

85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be filed with the department and that the department notify the water court and the county clerk and recorder of each transfer filed.

History: **En. Sec. 1, Ch. 674, L. 1983; amd. Sec. 1, Ch. 271, L. 1985; amd. Sec. 146, Ch. 370, L. 1987.**

Cross-References

Transfer of appropriation right, 85-2-403.

85-2-422. Definition. As used in 85-2-421 through 85-2-424 and 85-2-426, "water right" means the right to use water as documented by a claim to an existing right, a permit, or a certificate of water right.

History: **En. Sec. 2, Ch. 674, L. 1983; amd. Sec. 147, Ch. 370, L. 1987.**

Cross-References

Transfer of appropriation right, 85-2-403.

85-2-423. Water right transfer certificate. (1) The chief water judge and the department shall prescribe the form and content of the water right transfer certificate.

(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

History: En. Sec. 3, Ch. 674, L. 1983.

85-2-424. Filing. (1) The transferor of a water right shall file with the department a water right transfer certificate within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall contain a water rights disclosure whereby the transferor shall acknowledge, at or before closing, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property. If the realty transfer certificate discloses a transfer of water rights, a water right transfer certificate must be completed and filed with the department. The recording of the deed or other instrument may not be delayed because of the transfer of the water rights.

(3) Upon request of the department, the county clerk and recorder shall send to the department, on a monthly basis, a copy of the clerk and recorder's copy of any realty transfer certificate that discloses a transfer of water rights.

History: En. Sec. 4, Ch. 674, L. 1983; amd. Sec. 2, Ch. 271, L. 1985; amd. Sec. 10, Ch. 805, L. 1991; amd. Sec. 3, Ch. 167, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 167 in (1), before "shall", deleted "or his agent or representative"; in (2), at end of first sentence, substituted "contain a water rights disclosure whereby the transferor shall acknowledge, at or before closing, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property" for "note whether or not the transfer includes a transfer of water rights" and in second sentence, after "certificate", substituted "discloses" for "notes" and at end substituted "a water right transfer certificate must be completed and filed with the department" for "the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights"; substituted (3) requiring sending copies to the Department on a monthly basis for former language that read: "The county clerk and recorder shall send to the department a list of all transfers that involve transfers of water rights. The list must be sent every month and must include all transfers for the month immediately preceding the date of submittal to the department. The list must include the names and addresses of all parties to the transfer and a legal description of the land subject to the transfer"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 5, Ch. 167, L. 1997 provided: "[This act] is effective January 1, 1998, and does not apply to deeds entering escrow before that date."

85-2-425. Repealed. Sec. 6, Ch. 271, L. 1985.

History: En. Sec. 5, Ch. 674, L. 1983.

85-2-426. Fee. (1) The department shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department and the county clerk and recorder of processing the transfer certificate. The fee must be paid at the time of filing of the water right transfer certificate.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318.

History: En. Sec. 6, Ch. 674, L. 1983; amd. Sec. 3, Ch. 271, L. 1985; amd. Sec. 456, Ch. 418, L. 1995.

85-2-427 through 85-2-430 reserved.

85-2-431. Penalty. (1) The transferor of a water right is responsible for the filing of a water right transfer certificate with the department in accordance with 85-2-424.

(2) The transferor of a water right who violates 85-2-424(1) is liable for a civil penalty of not more than $50.

(3) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district.

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318.

History: En. Sec. 4, Ch. 271, L. 1985; amd. Sec. 4, Ch. 167, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 167 in (2), at beginning, substituted "The transferor of a water right" for "A person". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 5, Ch. 167, L. 1997, provided: "[This act] is effective January 1, 1998, and does not apply to deeds entered before that date."

85-2-432 through 85-2-435 reserved.

85-2-436. *(Temporary)* **Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the environmental quality council, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. Except as provided in 85-2-439, for purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the department pursuant to 85-2-437.

(b) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife,

and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the department and commission and submitted to the environmental quality council, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

History: En. Sec. 6, Ch. 658, L. 1989; amd. Sec. 1, Ch. 740, L. 1991; amd. Sec. 1, Ch. 175, L. 1993; amd. Sec. 8, Ch. 370, L. 1993; amd. Sec. 457, Ch. 418, L. 1995; amd. Sec. 9, Ch. 487, L. 1995; amd. Sec. 73, Ch. 545, L. 1995.

Cross-References

Definition of appropriate and beneficial use, 85-2-102.

Changes in appropriation rights, 85-2-402.

Abandonment of appropriation right, 85-2-404.

Contributions for leasing appropriation rights — general spending authority, 87-1-610.

85-2-437. *(Temporary)* **Department designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the department for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The department may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The department may designate no more than 20 stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the department may remove the designation from that stream reach and designate another stream reach pursuant to this section. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

History: En. Sec. 4, Ch. 658, L. 1989; amd. Sec. 2, Ch. 740, L. 1991; amd. Sec. 2, Ch. 175, L. 1993; amd. Sec. 458, Ch. 418, L. 1995.

85-2-438. *(Temporary)* **Lease validity.** All leases entered into prior to June 30, 1999, remain valid until the expiration date of the lease. *(Terminates June 30, 1999—sec. 7, Ch. 740, L. 1991.)*

History: En. Sec. 3, Ch. 740, L. 1991.

85-2-439. *(Temporary)* **Upper Clark Fork River basin instream flow pilot program.** (1) The department shall accept and process change applications from a person in accordance with 85-2-402 for the purpose of leasing or temporarily changing existing water rights to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin, as defined in 85-2-335. The application must:

(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and

(b) provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(2) The applicant shall pay all costs associated with installing measuring devices, measuring flows, and providing measurement records according to the measurement plan required in subsection (1).

(3) The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.

(4) The department may modify or revoke a change approval if an appropriator other than an appropriator described in subsection (5) proves by a preponderance of the evidence that the appropriator's water right is adversely affected.

(5) A person issued a water use permit with a priority of appropriation after the date of filing an application for change under this section may not object to the change approval, the use of the appropriation right according to the terms of the change approval, or the reversion of the appropriation right to its previous use.

(6) The priority of appropriation for a right to maintain and enhance streamflows to benefit the fishery resource under this section is the same as the priority of appropriation of the right approved for change.

(7) Neither a change in appropriation right nor any other approval is required for the reversion of the appropriation right to its previous use.

(8) Only the owner of the water right may seek enforcement of the change authorization or object under 85-2-308.

(9) The Upper Clark Fork River basin steering committee shall complete and submit to the governor and the legislature by December 31, 2004, a report evaluating the effects of all change approvals issued to maintain and enhance streamflows to benefit the fishery resource under this section. The report must:

(a) consider the effects upon other water right holders, tax values and revenue, fisheries, recreation, water quality, and other economic, social, and environmental effects; and

(b) include recommendations to terminate, continue, enlarge, or otherwise modify the pilot program.

(10) Nothing in this section authorizes the sale of an appropriation right to maintain or enhance streamflows. *(Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)*

History: En. Sec. 6, Ch. 487, L. 1995.

85-2-440. Upper Clark Fork River basin change and lease validity — limitations. All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005, remain valid until the expiration date of the temporary change and lease. A temporary change or lease authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.

History: En. Sec. 4, Ch. 353, L. 1997.

Compiler's Comments

Effective Date: Section 6, Ch. 353, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 22, 1997.

Part 5
Ground Water

Part Cross-References

Board of Water Well Contractors, 2-15-3307.

Water well contractors, Title 37, ch. 43.

Metal mine monitoring of water quality and quantity — action for damages to water supply, 82-4-355.

85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Ground water" means any water that is beneath the ground surface.

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part); amd. Sec. 1, Ch. 561, L. 1979; amd. Sec. 11, Ch. 805, L. 1991.

85-2-502. Administrative rules. The department may prescribe and enforce reasonable rules concerning and providing for inspection and entry, the circumstances under which the construction of weirs or other measuring devices may be required, and other similar matters that are required by and consistent with the administration of this part.

History: En. Sec. 21, Ch. 237, L. 1961; amd. Sec. 177, Ch. 253, L. 1974; R.C.M. 1947, 89-2931; amd. Sec. 459, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-2-503. Controlled ground water subareas. For purposes of administration, large ground water areas may be divided into convenient administrative units known as subareas.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).

85-2-504. Standards for determining fresh water. Fresh water shall be considered to be water fit for domestic, livestock, or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).

Cross-References

Water quality — classification and standards, Title 75, ch. 5, part 3.

85-2-505. Waste and contamination of ground water prohibited. (1) No ground water may be wasted. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination, or pollution of ground water through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided, however, in the following cases the withdrawal or use of ground water shall not be construed as waste under this part:

(a) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground water;

(b) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(c) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

(d) the disposal of ground water used in connection with producing, reducing, smelting, and milling metallic ores and industrial minerals or that displaced from an aquifer by the storage of other mineral resources.

(2) The department at any time may hold a hearing on its own motion or upon petition signed by a representative body of users of ground water in any area or subarea to determine whether the water supply within such area or subarea is used in compliance with this part.

History: En. Sec. 16, Ch. 237, L. 1961; amd. Sec. 173, Ch. 253, L. 1974; amd. Sec. 47, Ch. 460, L. 1977; R.C.M. 1947, 89-2926.

Cross-References

Water quality, Title 75, ch. 5.

Prevention of waste, 85-2-114.

Permit for conversion of nonproductive oil or gas well, 85-2-303.

Drainage districts, Title 85, ch. 8.

85-2-506. Controlled ground water areas — designation or modification. (1) The department may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water in a ground water area in which there are alleged to be facts showing:

(a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively;

(e) that excessive ground water withdrawals would cause contaminant migration;

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

(3) When a proposal is made, the department shall fix a time and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) The notice of hearing must be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon the bureau; and upon the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

History: **En. Sec. 4, Ch. 237, L. 1961; amd. Sec. 168, Ch. 253, L. 1974; R.C.M. 1947, 89-2914; amd. Sec. 2, Ch. 561, L. 1979; amd. Sec. 1, Ch. 189, L. 1985; amd. Sec. 4, Ch. 460, L. 1993; amd. Sec. 460, Ch. 418, L. 1995.**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Water well contractors, Title 37, ch. 43.

Montana coordinate system — land description, Title 70, ch. 22, part 2.

85-2-507. Limiting withdrawals — modification of order. (1) At the time set for the hearing, the department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record must be kept of all evidence taken at the hearing. The procedure must secure a full, fair, and orderly proceeding and permit all relevant evidence to be received. The common-law and statutory rules of evidence apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the department shall make written findings and an order. The department shall by order declare the area in question to be a controlled ground water area if the department finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control to be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order must define the boundary of the controlled ground water area and must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers which wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall refuse to accept any applications for beneficial water use permits to appropriate ground water located within the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the department to apportion the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and then to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in the order that the department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions making any additional requirements that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the department finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the department may by order designate the area in question to be a temporary controlled ground water area. The order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area must be designated as such for a period not to exceed 2 years from the date of the order designating the temporary controlled ground water area. The department may, for sufficient cause, extend the time period for an additional 2 years, and in this case, all ground water appropriators in the controlled ground water area must be notified of the extension.

(b) During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area. Facts gathered during the study period must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing must be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, is considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing must be conducted by the department in the manner of the first hearing, and the department shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event that the department does not complete the necessary study in the 2-year period or extension of the period, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the department must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the department must be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, must be mailed to each petitioner at the petitioner's last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled

ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of the order as prescribed in this section, the order is final and conclusive unless an appeal from the order is taken.

(8) The department may by order suspend, modify, or revoke any order made as provided in this section upon the notice and in the manner that is reasonable under the circumstances. A copy of each suspension, modification, or revocation must be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending, the department may restrict further development of the subarea.

History: **En. Sec. 5, Ch. 237, L. 1961; amd. Sec. 41, Ch. 452, L. 1973; amd. Sec. 169, Ch. 253, L. 1974; R.C.M. 1947, 89-2915; amd. Sec. 3, Ch. 561, L. 1979; amd. Sec. 148, Ch. 370, L. 1987; amd. Sec. 461, Ch. 418, L. 1995.**

Cross-References

Informal proceedings, 2-4-604.

Hearing — rules of evidence, cross-examination, and judicial notice, 2-4-612.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Evidence, Title 26.

Injunctions, Title 27, ch. 19.

Public water supply, Title 75, ch. 6, part 1.

Declaration of policy and purpose, 85-2-101.

85-2-508. Controlled ground water areas — permits to appropriate. A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the department in accordance with part 3 of this chapter. The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments).

History: **En. Sec. 8, Ch. 237, L. 1961; amd. Sec. 43, Ch. 452, L. 1973; amd. Sec. 172, Ch. 253, L. 1974; R.C.M. 1947, 89-2918.**

Cross-References

Application for permit, 85-2-302.

Terms of permit, 85-2-312.

85-2-509. Administrative finding of priorities. (1) The department, at its discretion, or any person claiming a right to withdraw ground water (whether or not from a controlled area) may initiate a hearing by the department for the ascertainment of all existing rights to the use of the ground water in the ground area or subarea involved. The department shall produce at the hearing a map showing and describing all the lands included in the ground water area or subarea and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods shall not modify or cancel the relative priorities of the rights.

(2) After January 1, 1962, in a hearing for the ascertainment and finding of priorities involving rights to the use of ground water, all appropriators of ground water or of surface water in the particular controlled area or subarea shall be included as parties and notified in the manner provided in 85-2-506.

History: **En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974; R.C.M. 1947, 89-2916(1), (3).**

Cross-References

Informal disposition and hearings — waiver of administrative proceedings, 2-4-603.

Priority, 85-2-401.

Transfer of appropriation right, 85-2-403.

85-2-510. Production of water from oil and gas wells — hearings — jurisdiction of board of oil and gas conservation. Within any designated or modified controlled ground water area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the board of oil and gas conservation. Hearings pertaining to the production, use, or disposal of water from those wells shall be held by that board in accordance with the procedures established by that board. The department may petition the board of oil and gas conservation for hearings in regard to those operations, and it shall be notified by the board of oil and gas conservation of those hearings instigated by other parties when those hearings involve operations within a controlled ground water area or subarea.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974; R.C.M. 1947, 89-2916(2).

Cross-References

Abandoned oil and gas wells — reclamation, Title 82, ch. 10, part 4.

Regulation by Board of Oil and Gas Conservation, Title 82, ch. 11, part 1.

Permit for conversion of nonproductive oil or gas well, 85-2-303.

85-2-511. Scope of administrative hearing. (1) In a hearing for the ascertainment and finding of priorities to the use of ground water, the department in its finding and order shall confirm, modify, alter, or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies; shall determine the priority of rights and the quantity of ground water to which each appropriator who is a party to the proceedings is entitled in the particular ground water area or subarea; and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water may not be drawn by appropriators. The department shall act in administering and enforcing the order, as provided in 85-2-507.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the department shall be final and conclusive when it is published and mailed as provided for orders issued under 85-2-507.

History: En. Sec. 7, Ch. 237, L. 1961; amd. Sec. 42, Ch. 452, L. 1973; amd. Sec. 171, Ch. 253, L. 1974; R.C.M. 1947, 89-2917.

Cross-References

Informal disposition and hearings — waiver of administrative proceedings, 2-4-603.

Hearing — rules of evidence, cross-examination, and judicial notice, 2-4-612.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-512. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of environmental quality, and any other private, state, or governmental agency.

(2) The department may request specific investigations by the public agencies listed in subsection (1) whenever desired information is not otherwise available.

History: En. Sec. 23, Ch. 237, L. 1961; amd. Sec. 179, Ch. 253, L. 1974; R.C.M. 1947, 89-2933; amd. Sec. 462, Ch. 418, L. 1995.

Cross-References

Bureau of Mines and Geology — purpose, 20-25-212.

Water quality, Title 75, ch. 5.

Board of Oil and Gas Conservation, Title 82, ch. 11, part 1.

85-2-513. Administration of oaths and subpoena of witnesses. The department may administer oaths and issue subpoenas for the attendance of witnesses in any investigation, hearing, or proceeding held by it.

History: En. Sec. 24, Ch. 237, L. 1961; amd. Sec. 180, Ch. 253, L. 1974; R.C.M. 1947, 89-2934.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

85-2-514. Inspection of wells. The department, the state bureau of mines and geology, or the department of environmental quality may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part.

History: En. Sec. 17, Ch. 237, L. 1961; amd. Sec. 174, Ch. 253, L. 1974; R.C.M. 1947, 89-2927; amd. Sec. 463, Ch. 418, L. 1995.

Cross-References

Environmental advisory boards, Title 2, ch. 15, part 21.

Bureau of Mines and Geology — purpose, 20-25-212.

Entry on land, 85-2-115.

85-2-515. Information available to public. Such information as is required or secured under the provisions hereof shall constitute public records and as such shall be available to the public at all reasonable times.

History: En. Sec. 18, Ch. 237, L. 1961; R.C.M. 1947, 89-2928.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

85-2-516. Well logs. Within 60 days after any well is completed, the driller shall file with the department a well log report on a form provided by the department at its offices and at the offices of the county clerk and recorders. The department may return the report for refiling if it is incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

History: En. 89-2928.1 by Sec. 44, Ch. 452, L. 1973; amd. Sec. 175, Ch. 253, L. 1974; R.C.M. 1947, 89-2928.1.

Cross-References

Measurement of water, 85-2-103.

Department duties, 85-2-112.

85-2-517. Reports by water well drillers. The forms, reports, and information required to be filed by this part are in addition to all other reports and information which the drillers of water wells in the state are required by law to file with agencies of the state.

History: En. Sec. 19, Ch. 237, L. 1961; amd. Sec. 48, Ch. 460, L. 1977; R.C.M. 1947, 89-2929.

Cross-References

Water well contractors, Title 37, ch. 43.

85-2-518. Ground water supervisors. The department may appoint one or more ground water supervisors for each designated controlled area and may appoint one or more ground water supervisors at large. Within their respective jurisdictions and under the direction of the department, the ground water supervisors and supervisors at large shall supervise the withdrawal of ground water and the carrying out of orders issued by the department.

History: En. Sec. 22, Ch. 237, L. 1961; amd. Sec. 178, Ch. 253, L. 1974; R.C.M. 1947, 89-2932.

85-2-519. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. 89-2934.1 by Sec. 45, Ch. 452, L. 1973; amd. Sec. 181, Ch. 253, L. 1974; R.C.M. 1947, 89-2934.1.

85-2-520. Penalties. A person who violates or refuses or neglects to comply with any provision of this part or of any order or rule promulgated by the department or who commits waste is guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $250 for each offense.

History: En. Sec. 26, Ch. 237, L. 1961; amd. Sec. 182, Ch. 253, L. 1974; R.C.M. 1947, 89-2936; amd. Sec. 464, Ch. 418, L. 1995.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 6
Yellowstone River Basin

Part Cross-References

Diversions from Yellowstone River Basin, Title 85, ch. 2, part 8.

Yellowstone River Compact, Title 85, ch. 20, part 1.

85-2-601. Statement of legislative findings and policy. The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational, and other uses and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon, existing rights to water in the Yellowstone basin must be accurately determined for their protection and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

History: En. 89-8-103 by Sec. 1, Ch. 116, L. 1974; R.C.M. 1947, 89-8-103.

Cross-References

Environmental protection and improvement, Art. IX, sec. 1, Mont. Const.

Water rights, Art. IX, sec. 3, Mont. Const.

Department powers over state waters, 85-1-204.

Negotiations with other states by Department, 85-1-223.

Declaration of policy and purpose, 85-2-101.

85-2-602. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) (a) "Application" means an application for a permit under part 3 of this chapter to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(i) a reservoir with a total planned capacity of 14,000 acre-feet or more; or

(ii) for a flow rate greater than 20 cubic feet of water per second.

(b) The term also includes an application for approval under 85-2-402 to change the purpose of use.

(2) "Basin" means the Yellowstone River basin.

(3) "Reservation" means a reservation of water provided for by 85-2-316.

History: En. 89-8-104 by Sec. 2, Ch. 116, L. 1974; R.C.M. 1947, 89-8-104(Intro.), (2) thru (4).

85-2-603. Suspension of action. (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) the department makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 85-2-316;

(b) a final determination of existing rights has been made in the source of supply in accordance with part 2 of this chapter; or

(c) January 1, 1978. However, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and the stay or injunction prevents the board from making a final determination on the application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before an application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, must be issued subject to that preferred use.

History: En. 89-8-105 by Sec. 3, Ch. 116, L. 1974; amd. Sec. 1, Ch. 26, L. 1977; R.C.M. 1947, 89-8-105; amd. Sec. 465, Ch. 418, L. 1995.

85-2-604. When department may suspend action. The department may suspend action on applications not meeting the definition of application in 85-2-602 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications, if granted, would be contrary to the policies and purposes of this part. If the department suspends action on such applications, the provisions of 85-2-603 apply.

History: En. 89-8-106 by Sec. 4, Ch. 116, L. 1974; R.C.M. 1947, 89-8-106.

Cross-References

Contested case hearing, 2-4-612.

85-2-605. Reservations. (1) The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency of the United States may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis must be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

(2) Notwithstanding other provisions of this title, the department shall extend the duration of the 14 conservation district reservations and 8 municipal reservations approved by administrative order dated December 15, 1978, in the basin until those reservations are perfected, or until those reservations are revoked pursuant to 85-2-316.

History: En. 89-8-107 by Sec. 5, Ch. 116, L. 1974; amd. Sec. 10, Ch. 416, L. 1977; R.C.M. 1947, 89-8-107; amd. Sec. 1, Ch. 145, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 145 inserted (2) extending water reservations in the Yellowstone Basin until they are perfected; and made minor changes in style. Amendment effective March 25, 1997.

Cross-References

Negotiations with other states by Department, 85-1-223.

Department powers, 85-2-111.

85-2-606. Application of part. This part applies to applications currently pending with the department, as well as applications filed with the department after March 11, 1974.

History: En. 89-8-108 by Sec. 6, Ch. 116, L. 1974; R.C.M. 1947, 89-8-108.

85-2-607. Utility facilities. This part does not apply to applications to appropriate water for use by a utility facility for which a certificate of environmental compatibility and public need is granted pursuant to the Montana Major Facility Siting Act.

History: En. 89-8-109 by Sec. 7, Ch. 116, L. 1974; R.C.M. 1947, 89-8-109.

Cross-References

Montana Major Facility Siting Act — certification proceedings, Title 75, ch. 20, part 2.

85-2-608. Certain changes of use allowed. Notwithstanding any provision of this part, the department may approve a change of purpose of use to agricultural, irrigation, domestic, and municipal uses if it determines that the change is not contrary to the policies and purposes of this part.

History: En. 89-8-110 by Sec. 8, Ch. 116, L. 1974; R.C.M. 1947, 89-8-110.

Cross-References

Changes in appropriation rights, 85-2-402.

Part 7

Indian and Federal Water Rights — Water Rights Within Indian Reservations

Part Cross-References

Indian lands recognized to be under federal jurisdiction, Art. I, Mont. Const.

Reserved Water Rights Compact Commission, 2-15-212.

Fort Peck-Montana Compact, Title 85, ch. 20, part 2.

Northern Cheyenne-Montana Compact, Title 85, ch. 20, part 3.

85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor.

History: **En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 651, L. 1987; amd. Sec. 466, Ch. 418, L. 1995; amd. Sec. 298, Ch. 42, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in second sentence, substituted "It is the intent of the legislature that the unified proceedings include all claimants" for "Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants". Amendment effective March 12, 1997.

Cross-References

Reserved Water Rights Compact Commission, 2-15-212.

Policy considerations, 85-1-101.

Negotiations with other states by Department, 85-1-223.

Declaration of policy and purpose, 85-2-101.

Statement of claim for federal reserved water rights, 85-2-224.

Final decree, 85-2-234.

85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not

been accomplished by July 1, 2005, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 8, Ch. 268, L. 1981; amd. Sec. 6, Ch. 667, L. 1985; amd. Sec. 2, Ch. 358, L. 1987; amd. Sec. 3, Ch. 784, L. 1991; amd. Sec. 2, Ch. 44, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 44 in (3), in second sentence, substituted "July 1, 2005" for "July 1, 1999"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

85-2-703. Negotiation with federal government. The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

History: En. Sec. 27, Ch. 697, L. 1979.

Cross-References

Negotiations with other states by Department, 85-1-223.

85-2-704. Termination of negotiations. (1) The commission or any negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 6 months of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 268, L. 1981; amd. Sec. 7, Ch. 667, L. 1985.

85-2-705. Status reports to chief water judge. (1) The Montana reserved water rights compact commission must submit to the chief water judge, appointed pursuant to 3-7-221, a report on the status of its negotiations on July 1, 1985, and every 6 months thereafter.

(2) Each report must state which Indian tribes and federal agencies are engaged in negotiations, whether any negotiations with Indian tribes or federal agencies have been terminated, and the progress of negotiations on a tribe-by-tribe and agency-by-agency basis. The report must be made available to the public.

History: En. Sec. 8, Ch. 667, L. 1985.

85-2-706. Renumbered 85-20-401 by Code Commissioner, 1994.

85-2-707. Renumbered 85-20-402 by Code Commissioner, 1994.

85-2-708. Water administration interim agreements within Indian reservations. (1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) An agreement entered into pursuant to subsection (1) must:

(a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;

(b) provide that any permits must be issued in accordance with the criteria established by state law; and

(c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

History: En. Sec. 19, Ch. 497, L. 1997.

Part 8

Diversions From the Yellowstone River Basin

85-2-801. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Basin" means the Yellowstone River basin.

(2) "Compact" means the Yellowstone River Compact provided for in 85-20-101.

History: En. Sec. 1, Ch. 581, L. 1981.

85-2-802. Authority to approve diversions. The department may consent on behalf of the state of Montana to diversions of water from the basin pursuant to Article X of the compact, including diversions of water allocated under the terms of the compact to the other signatory states of Wyoming and North Dakota.

History: En. Sec. 2, Ch. 581, L. 1981.

85-2-803. Legislative review. (1) A diversion of water from the basin pursuant to Article X of the compact consented to by the department under the provisions of this part may not be made until one of the following occurs, whichever is later:

(a) the legislature ratifies the first determination of the department to consent to a diversion of water from the basin pursuant to Article X of the compact; or

(b) July 1, 1983.

(2) A decision by the department to disapprove a diversion of water is not subject to legislative approval.

History: **En. Sec. 3, Ch. 581, L. 1981.**

85-2-804. Application — notice — objections — hearing. (1) Any appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) Any appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in subsections (1) and (2) of 85-2-307.

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state his name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state his name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing shall be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6.

History: En. Sec. 4, Ch. 581, L. 1981.

85-2-805. Criteria for approval — terms. (1) The department may issue its approval of a diversion of water allocated to Montana under the terms of the compact or unallocated compact water diverted in Montana if:

(a) the diversion and the ultimate use of the water in Montana are for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant signs an agreement to comply with the laws of the signatory states to the compact in constructing, operating, and maintaining all facilities associated with the diversion and ultimate use of the water.

(2) The department may approve a diversion of water allocated to North Dakota or Wyoming or unallocated compact water diverted in North Dakota or Wyoming if the diversion will not adversely affect the property, rights, or interests of an appropriator located in Montana and if the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states.

(3) The department may approve a diversion subject to such terms, conditions, restrictions, and limitations as it considers necessary to meet the applicable criteria listed in subsection (1) or (2).

History: En. Sec. 5, Ch. 581, L. 1981.

85-2-806. Combined proceeding. The department, upon petition by the applicant, may consider and act upon any application for diversion of water from the basin filed pursuant to the provisions of this part in conjunction with proceedings involving the siting of a facility or associated facilities conducted under the provisions of Title 75, chapter 20, part 4, as amended, or in conjunction with any departmental proceeding involving the issuance of a permit or approval of a change conducted under Title 85, chapter 2, if in the opinion of the department consideration of both applications in the same proceeding will better enable the department to fulfill its functions, duties, and responsibilities under the provisions of Title 75, chapter 20, part 4, or Title 85, chapter 2, and this part. The department's consent to the diversion of Montana water out of the basin for ultimate use in a facility as defined in Title 75, chapter 20, must be contingent upon the department's issuance of a certificate for the facility in accordance with Title 75, chapter 20. The department's consent terminates 10 years after the date of issuance of the consent unless the department issues the certificate for the facility in accordance with Title 75, chapter 20, and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department.

History: En. Sec. 6, Ch. 581, L. 1981; amd. Sec. 467, Ch. 418, L. 1995.

85-2-807. Department authorized to appear in administrative and legal proceedings. The department may appear on behalf of the state of Montana in proceedings before the legislatures and administrative agencies of the other signatory states to the compact and in legal proceedings commenced in federal or state court within the other signatory states involving the consent of such signatory states to diversions of water from the basin under Article X of the compact and any other laws or rules of such signatory states applicable to such diversions to the extent necessary to protect the interests and the citizens of Montana in those proceedings.

History: En. Sec. 7, Ch. 581, L. 1981.

Part 9
Ground Water Assessment

Part Cross-References

Ground Water Assessment Steering Committee, 2-15-1523.

The Montana Resource Indemnity Trust and Ground Water Assessment Act, 15-38-101.

Water well contractors — annual renewal — fee — revocation for nonrenewal, 37-43-307.

Application for permit — fee, 85-2-302.

85-2-901. Short title. This part may be cited as the "Montana Ground Water Assessment Act".

History: En. Sec. 1, Ch. 769, L. 1991.

85-2-902. Findings and purpose. (1) The legislature finds that:

(a) Montana's citizens depend on ground water for a variety of uses, including domestic, agricultural, industrial, irrigation, mining, municipal, power, and recreation, and for maintenance of ecosystems and surface water supplies;

(b) ground water supplies and quality are threatened by a variety of contaminant sources;

(c) there is insufficient information characterizing the volume, quality, and flow patterns of the state's ground water;

(d) ground water information deficiencies are hampering the efforts of citizens and units of government to properly manage, protect, and develop ground water;

(e) government policies and programs should focus on preventing ground water contamination and supply depletion, but in order for preventive policies and programs to be effective, better ground water information is required; and

(f) there is a need for better coordination among those numerous units of state, federal, and local government with responsibility for ground water management, protection, and development.

(2) The purposes of this part are:

(a) to improve the quality of ground water management, protection, and development decisions within the public and private sectors by establishing a program to systematically assess and monitor the state's ground water and to disseminate the information to interested persons; and

(b) to improve coordination of ground water management, protection, development, and research functions among units of state, federal, and local government by establishing a ground water assessment steering committee.

History: En. Sec. 2, Ch. 769, L. 1991.

85-2-903. Definitions. As used in this part, the following definitions apply:

(1) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(2) "Ground water assessment steering committee" means the committee established by 2-15-1523.

(3) "Ground water characterization program" means a program to systematically assess and document the hydrogeology and quality of the state's major aquifers.

(4) "Ground water characterization study" means the assessment of individual aquifers in specific areas within the state.

(5) "Ground water monitoring program" means a program to produce and maintain a long-term record of ground water chemistry and water level changes, based on information collected from a statewide network of observation wells.

History: En. Sec. 3, Ch. 769, L. 1991.

85-2-904 reserved.

85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, 14.1% of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case an allocation may not be made and the proceeds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part;

(c) proceeds allocated to the account as provided in 15-36-324 and 15-38-106; and

(d) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part.

History: En. Secs. 4, 5, Ch. 769, L. 1991; amd. Sec. 2, Ch. 31, L. 1995; amd. Sec. 299, Ch. 42, L. 1997; amd. Sec. 6, Ch. 444, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 42 in (1), in first sentence, substituted "special revenue fund" for "state special revenue fund"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 444 in (4)(a)(i) substituted "proceeds" for "funds"; in (4)(b) substituted "by state government agencies" for "by federal or state government agencies"; inserted (4)(c) relating to proceeds allocated to the ground water assessment account by 15-36-324 and 15-38-106; and made minor changes in style. Amendment effective July 1, 1997.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

The amendments to this section made by sec. 5, Ch. 120, L. 1997, were rendered void by sec. 7, Ch. 542, L. 1997, a coordination section.

85-2-906. Ground water characterization program — ground water monitoring program. (1) There is a ground water characterization program and a ground water monitoring program.

(2) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall establish and administer the ground water characterization program and the ground water monitoring program.

(3) The Montana bureau of mines and geology shall work with units of local government, ground water users, and other affected organizations and individuals in areas of the state that are included in a ground water characterization study and, if warranted by the level of local interest in a ground water characterization study, shall establish a local ground water assessment advisory committee.

(4) The ground water assessment steering committee created by 2-15-1523 shall:

(a) oversee expenditures from the ground water assessment account and organization plans and work plans proposed by the Montana bureau of mines and geology to implement the ground water characterization and ground water monitoring programs, including plans for local involvement and participation in ground water characterization studies;

(b) approve ground water monitoring sites;

(c) prioritize and select ground water characterization study areas;

(d) develop plans for ground water information management and dissemination;

(e) develop plans for integrating existing ground water information with information collected under the programs created by subsection (1);

(f) coordinate ground water information collection projects sponsored by individual units of state, federal, or local government with the programs created by subsection (1); and

(g) evaluate reports and other information produced by the Montana bureau of mines and geology from ground water characterization studies.

(5) The ground water assessment steering committee shall invite representatives of local governments and Indian tribes with jurisdiction over areas of the state that are included in an active ground water characterization study or in a study scheduled to begin in the ensuing biennium, as well as affected citizens in these areas, to participate in steering committee meetings.

History: En. Sec. 6, Ch. 769, L. 1991.

85-2-907. Ground water information collection by local governments. Units of local government may conduct ground water information collection projects in advance of ground water characterization studies conducted under the program created by 85-2-906(1). Local governments shall consult with the Montana bureau of mines and geology in designing local ground water information collection projects and studies and, subject to local funding availability, shall conduct the local projects and studies to produce information that is compatible with the type of information produced by the ground water characterization program.

History: En. Sec. 7, Ch. 769, L. 1991.

CHAPTER 3

ATMOSPHERIC WATER WEATHER MODIFICATION

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Part 1
General Provisions

85-3-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval, not exceeding 1 year.

(3) "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(4) "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 20, L. 1967; amd. Sec. 1, Ch. 368, L. 1973; amd. Sec. 140, Ch. 253, L. 1974; Sec. 89-310, R.C.M. 1947; (3)En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977; Sec. 89-319, R.C.M. 1947; R.C.M. 1947, 89-310, 89-319(2); amd. Sec. 468, Ch. 418, L. 1995.

85-3-102. Standards for research in weather modification control. The department may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it considers necessary or desirable to minimize danger to health, safety, welfare, or property.

History: En. Sec. 3, Ch. 368, L. 1973; amd. Sec. 141, Ch. 253, L. 1974; R.C.M. 1947, 89-312.1; amd. Sec. 469, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-3-103. Department powers. In addition to any other acts authorized by law, the department may:

(1) acquire materials, equipment, and facilities as are necessary to perform its duties under this chapter;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, expend the funds for the administration of this chapter;

(3) make such studies and investigations and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this chapter;

(4) cooperate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this chapter;

(5) represent the state in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control;

(6) enter into cooperative agreements with the United States government or any of its agencies, with the various counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities, and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and make arrangements, including contracts and agreements, for the conduct of research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological, and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials, and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational, and other purposes;

(d) the protection of life and property during research and operational activities.

History: **En. Sec. 3, Ch. 20, L. 1967; amd. Sec. 2, Ch. 368, L. 1973; R.C.M. 1947, 89-312.**

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Conformity to federal regulations authorized, 85-1-222.

Department powers, 85-2-111.

85-3-104. Nonliability of state and agents for acts of private persons. This chapter may not be construed to impose or accept any liability or responsibility on the part of the state, the department, or any state officials or employees for any weather modification and control activities of any private person or group.

History: **En. Sec. 21, Ch. 20, L. 1967; amd. Sec. 152, Ch. 253, L. 1974; R.C.M. 1947, 89-330; amd. Sec. 470, Ch. 418, L. 1995.**

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

85-3-105. Violation as misdemeanor and continuing violations. A person violating any provision of this chapter is guilty of a misdemeanor, and a continuing violation is punishable as a separate offense for each day during which it occurs.

History: **En. Sec. 22, Ch. 20, L. 1967; R.C.M. 1947, 89-331.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

Part 2

Licenses and Permits

85-3-201. License and permit required for weather modification and control. A person may not engage in activities for weather modification and control except under and in accordance with a license and a permit issued by the department authorizing the activities.

History: **En. Sec. 4, Ch. 20, L. 1967; R.C.M. 1947, 89-313; amd. Sec. 471, Ch. 418, L. 1995.**

85-3-202. Department to review applications. (1) The department shall review all applications for weather modification activities. The department shall prepare a report and an environmental impact statement pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The department may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967; amd. Sec. 4, Ch. 368, L. 1973; amd. Sec. 142, Ch. 253, L. 1974; R.C.M. 1947, 89-314; amd. Sec. 1, Ch. 611, L. 1993; amd. Sec. 472, Ch. 418, L. 1995.

Cross-References

Adoption of rules, Title 2, ch. 4, part 3.

Research programs — powers of university units, 20-25-108.

85-3-203. Licenses — qualifications of licensees. The license to engage in activities for weather modification and control must be issued, in accordance with procedures and subject to conditions the department may by rule establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the department. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967; R.C.M. 1947, 89-315; amd. Sec. 473, Ch. 418, L. 1995.

85-3-204. Licenses — term and renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967; R.C.M. 1947, 89-316.

85-3-205. License or renewal fee. A license shall be issued or renewed only upon the payment to the department of $100 for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967; amd. Sec. 143, Ch. 253, L. 1974; R.C.M. 1947, 89-317.

85-3-206. Permits — requirements and hearing. (1) The permits must be issued in accordance with procedures and subject to conditions that the department may by rule establish to effectuate this chapter.

(2) Within 30 days after completion of the report required under 85-3-202, the department shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The department may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention has been published;

(c) an applicant has furnished proof of financial responsibility in an amount to be determined by the department as required in 85-3-211;

(d) the fee for the permit has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted have been determined by the department to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(3) The department may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If a hearing is not held, the department may grant or conditionally grant a permit based on the information contained in the application and the department's report.

(4) Costs incurred by the department in holding a hearing under subsection (2) must be paid by the applicant.

History: En. Sec. 9, Ch. 20, L. 1967; amd. Sec. 1, Ch. 214, L. 1973; amd. Sec. 5, Ch. 368, L. 1973; amd. Sec. 144, Ch. 253, L. 1974; amd. Sec. 1, Ch. 46, L. 1977; R.C.M. 1947, 89-318; amd. Sec. 2, Ch. 611, L. 1993; amd. Sec. 474, Ch. 418, L. 1995.

85-3-207. Separate permit for each operation. (1) Separate permits must be issued for each operation.

(2) If a permit is issued, the holder of the permit shall confine activities to the time and area limits set forth in the notice of intention, unless modified by the department. The permittee's activities must conform to any conditions imposed by the department. The permit may not be sold or transferred.

History: (1)En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977; Sec. 89-319, R.C.M. 1947; (2)En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977; Sec. 89-320, R.C.M. 1947; R.C.M. 1947, 89-319(1), 89-320(part); amd. Sec. 475, Ch. 418, L. 1995.

85-3-208. Notice of intention to apply for permit. Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department a notice of intention.

History: En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977; R.C.M. 1947, 89-320(part).

85-3-209. Notice of intention — contents. The notice of intention shall set forth at least the following:

(1) the name and address of the applicant;

(2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which and the approximate time during which the operation will be conducted;

(4) the area which is intended to be affected by the operation;

(5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967; R.C.M. 1947, 89-321.

85-3-210. Publication of notice of intention. (1) The department shall have the notice of intention, or that portion thereof including the items specified in 85-3-209, published at least once a week for 2 consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) The applicant shall reimburse the department for the costs of publication of the notice of intention.

History: En. Sec. 12, Ch. 20, L. 1967; amd. Sec. 146, Ch. 253, L. 1974; amd. Sec. 3, Ch. 46, L. 1977; R.C.M. 1947, 89-322.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-3-211. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by showing, to the satisfaction of the department, the applicant's ability to respond in damages for liability that might reasonably be attached to or result from the applicant's weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967; R.C.M. 1947, 89-323; amd. Sec. 300, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 near middle substituted "department" for "board"; and made minor changes in style. Amendment effective March 12, 1997.

85-3-212. Permit fee. The fee to be paid by each applicant for a permit must be equivalent to 1% of the estimated cost of the operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit. However, if the applicant is able to give satisfactory security for the payment of the balance, the applicant may be permitted to commence the operation and a permit may be issued upon the payment of not less than 50% of the fee. The balance due must be paid within 3 months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 147, Ch. 253, L. 1974; R.C.M. 1947, 89-324; amd. Sec. 476, Ch. 418, L. 1995.

85-3-213. State special revenue fund. All license and permit fees and fines collected under this chapter, other than those collected in a justice's court, shall be deposited in the state special revenue fund for use by the department in the administration of this chapter or as appropriated by the legislature.

History: En. Sec. 16, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 148, Ch. 253, L. 1974; amd. Sec. 1, Ch. 147, L. 1975; R.C.M. 1947, 89-325; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 60, Ch. 557, L. 1987; amd. Sec. 6, Ch. 630, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fund structure, 17-2-102.

85-3-214. Termination of licenses and permits. After notice to the licensee and a reasonable opportunity for a hearing, the department may modify, suspend, revoke, or refuse to renew any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary, if it appears that the licensee has violated any of the provisions of this chapter, or, in the case of a modification, if it appears that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967; R.C.M. 1947, 89-329; amd. Sec. 477, Ch. 418, L. 1995.

Part 3
Records

85-3-301. Records of operations maintained by licensees. Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

(1) the method employed;
(2) type of equipment used;
(3) kinds and amounts of material used;
(4) times and places of operation of the equipment;
(5) names and addresses of all individuals participating or assisting in the operation;
(6) any other general information as the department may require.

History: En. Sec. 17, Ch. 20, L. 1967; amd. Sec. 149, Ch. 253, L. 1974; R.C.M. 1947, 89-326.

85-3-302. Reports of operations. The department shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The department shall also require reports from any organization that is exempt from license and permit requirements as provided in 85-3-202.

History: En. Sec. 18, Ch. 20, L. 1967; amd. Sec. 150, Ch. 253, L. 1974; R.C.M. 1947, 89-327.

85-3-303. Records and reports open to public. The records and reports in the custody of the department shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967; amd. Sec. 151, Ch. 253, L. 1974; R.C.M. 1947, 89-328.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Part 4
County Weather Modification Authorities

Part Cross-References

Counties, Title 7, ch. 1, part 21.

County Commissioners, Title 7, ch. 4, part 21.

85-3-401. Definitions. As used in this part, the following definitions apply:

(1) "Authority" means a county weather modification authority established pursuant to 85-3-411 or 85-3-413 through 85-3-415.

(2) "Commissioner" means a county weather modification authority commissioner appointed pursuant to 85-3-411 or 85-3-413 through 85-3-415.

History: En. Sec. 1, Ch. 609, L. 1983.

85-3-402 through 85-3-410 reserved.

85-3-411. Weather modification authority created by petition — expiration — reinstatement. (1) Upon receipt of a valid petition signed by at least 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding general election, a board of county commissioners may by resolution create a weather modification authority. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed commissioners. If any of the five candidates named in the petition to be appointed commissioner is unable or refuses for any reason to accept appointment as commissioner or is disqualified by not meeting residence requirements as an elector in the county, the board of county commissioners shall name an appointee to fill the position. Each commissioner shall serve a 5-year term of office. If any commissioner submits his resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason after accepting office, the board of county commissioners shall name an appointee to fill the vacancy. The board of county commissioners may remove any commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, or gross incompetency. A vacancy occurring otherwise than by expiration of term of office must be filled for the unexpired term.

(2) Any authority created pursuant to this section expires 5 years after the date of the initial appointment of the commissioners. Any unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be transferred into the county general fund by the officers of the authority on or before the 5-year termination date provided by this section. However, all unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid shall remain in the name of the authority if the board of county commissioners of such county by resolution creates a weather modification authority and all its powers in accordance with 85-3-414.

(3) Nothing in this section prevents renewal of an authority for another 5 years by petition of the qualified electors in the same manner as the initial authority was created.

(4) If more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the last preceding general election must be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least 40% of the qualified electors in the county, and the sum total of all qualified electors signing all petitions filed must equal at least 60% of the qualified electors in the county. If the name of the same elector appears on two or more petitions, the name must be stricken from both petitions.

History: En. Sec. 2, Ch. 609, L. 1983.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Qualifications of voter, 13-1-111.

85-3-412. Petition content. (1) The petition for the creation of a weather modification authority and for appointment of commissioners shall contain:

(a) a title with the heading "Petition for Creation of (insert name of county) Weather Modification Authority";

(b) the following paragraph: We, the undersigned qualified electors of (name of county), state of Montana, request that the (name of county) board of county commissioners create by resolution a (name of county) weather modification authority and appoint the following five qualified electors of the county to 5-year terms of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

(c) the following paragraph: We, the undersigned qualified electors of the (name of county), state of Montana, are notified that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant the authority the power to certify to the board of county commissioners a mill levy tax not to exceed 2 mills upon the net taxable valuation of property in the county for a weather modification fund, which tax may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such fund must be used for weather modification activities as provided by 85-3-424. We, the undersigned, understand that the authority requested in this petition expires 5 years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided in 85-3-422, for one or more 5-year periods in accordance with 85-3-414.

(d) a heading, "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of Montana, are authorized to represent and act for us and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.

(2) All signatures to such petition must be numbered and dated by month, day, and year. The name must be written, with residence address and post-office address, including the county of residence.

(3) An affidavit must be attached to each petition and sworn to under oath before a notary public by the person circulating each petition, attesting to the fact that he circulated the petition and that each of the signatures to the petition is the genuine signature of the person whose name it purports to be and that each such person is a qualified elector in the county in which the petition was circulated.

History: En. Sec. 3, Ch. 609, L. 1983.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

85-3-413. Creation of authority by election. When a petition signed by not less than 20% of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners not later than 90 days prior to the next general election, the board of county commissioners shall submit the question to the electors of the county at the next general election. Upon approval by a majority of the votes cast, the board of county commissioners shall by resolution establish an authority as described in

85-3-411 with all powers set out in this part, including the power to certify a tax levy as provided by 85-3-422.

History: **En. Sec. 8, Ch. 609, L. 1983.**

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Times for holding general elections, 13-1-104.

Qualifications of voter, 13-1-111.

85-3-414. Creation of authority by resolution. (1) When an authority is about to expire, the board of county commissioners may by resolution authorize the creation of such weather modification authority and all its powers, including the power to certify a tax levy as provided by 85-3-422, for an additional 5-year period if the resolution authorizing the creation of such authority is adopted by the board of county commissioners before the date prescribed in the preceding resolution for its termination. Upon passing such resolution for the creation of the authority, the board of county commissioners shall appoint five commissioners to 5-year terms of office, subsequently filling vacancies in the manner prescribed by 85-3-411.

(2) The board may create the authority for subsequent 5-year periods by following the procedure provided in this section.

History: **En. Sec. 6, Ch. 609, L. 1983.**

Cross-References

General authority of County Commissioners, 7-5-2101.

85-3-415. Creation of authority by vote after resolution of county commissioners. The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall pass a resolution creating an authority as described in 85-3-411. Such an authority has all powers provided by this chapter, including the authority to levy a tax as provided by 85-3-422.

History: **En. Sec. 10, Ch. 609, L. 1983.**

Cross-References

Local election administration, Title 13, ch. 1, part 3.

85-3-416. Abolishment of authority by election. When a petition signed by not less than 20% of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of an authority created pursuant to 85-3-413 or 85-3-414 is presented to the board of county commissioners not later than 90 days prior to the next general election, the board of county commissioners shall submit the question to the electors of the county at the next general election. Upon approval by a majority of the votes cast, the board of county commissioners shall abolish the authority as of December 31 following the election. All unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be deposited in the general fund of the county.

History: **En. Sec. 9, Ch. 609, L. 1983.**

Cross-References
Times for holding general elections, 13-1-104.

85-3-417. Procedure for abolishment of authority by recall petition — petition form — disposition of funds. (1) After 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, petition the board of county commissioners of their county to recall the commissioners of an authority created pursuant to 85-3-411 and to abolish the authority, the board of county commissioners shall adopt a resolution recalling all commissioners of such authority and abolishing their offices and the authority until a weather modification authority is created by petition in accordance with 85-3-411.

(2) A recall petition must have a title with the heading "Recall Petition for the Abolishment of (insert name of county) Weather Modification Authority". The recall petition must incorporate a paragraph stating its purpose in clear language and must comply with all requirements prescribed in subsections (1)(d), (2), and (3) of 85-3-412 relating to petition content, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

(3) If the board of county commissioners adopts a resolution recalling all commissioners of a weather modification authority and abolishing the authority, all unexpended funds remaining in the name of the authority, after all proper bills and expenses have been paid, must be transferred to the county general fund by the weather modification authority commissioners on the effective date of the resolution. If outstanding valid bills are unpaid after that date, the board of county commissioners may pay such obligations from money in the county general fund.

History: En. Sec. 7, Ch. 609, L. 1983.

Cross-References
Montana Recall Act, Title 2, ch. 16, part 6.

85-3-418 through 85-3-420 reserved.

85-3-421. Commissioners — compensation — meetings — officers — disbursements. (1) A commissioner may receive no compensation for his services. Certificates of appointment must be filed with the county clerk and recorder.

(2) The powers of each authority are vested in its commissioners. A majority of the commissioners constitutes a quorum for the purpose of conducting the business of the authority, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners. A chairman, vice-chairman, secretary, and treasurer must be elected from among the commissioners. An authority may delegate to one or more of its commissioners such powers or duties as it considers proper.

(3) The secretary shall keep minutes of official meetings and shall include all official business, such as operations requested, and all authorizations for payment of weather modification authority funds.

(4) Disbursements authorized by the authority must be made by check signed by the chairman and the treasurer of the authority. Official policies must be entered into the minutes. An annual report must disclose funds received and expended, and a copy of the report must be filed with the county clerk and

recorder. The annual report must be presented at a public meeting called for such purpose.

History: En. Sec. 4, Ch. 609, L. 1983.

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

85-3-422. Tax certified by weather modification authority — disposition of proceeds. (1) The authority may certify annually to the board of county commissioners a tax of not to exceed 2 mills upon the taxable valuation of the property in the county for a weather modification fund. The tax must be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund may be used only for weather modification activities as provided by 85-3-424. The tax certified by the authority is limited to the period of existence of the authority.

(2) The money in the weather modification fund must be invested to earn interest at the rate most advantageous to the fund, consistent with law and prudent business practice.

History: En. Sec. 5, Ch. 609, L. 1983.

Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.

County taxation, Title 7, ch. 6, part 25.

85-3-423. County budget waived for first appropriation — conditions. The provisions of 7-6-2342 apply if an emergency condition requiring prompt expenditure occurs immediately after an authority has been created by resolution of the board of county commissioners and after certification of a mill levy by the authority. In that case and only for the initial or first appropriation for the authority, the county commissioners may appropriate, from money not otherwise appropriated in the general fund, money necessary to carry out the provisions of this part. However, the appropriation may not exceed an amount equal to the amount that would be raised by a 2-mill levy upon the taxable valuation of the property in the county.

History: En. Sec. 11, Ch. 609, L. 1983.

85-3-424. Declaration of emergency — hearing — determination of need for weather modification operation. (1) After receiving a petition requesting an operation to increase precipitation, initiate precipitation, or suppress hail and bearing the signatures of at least 50 registered electors of the county, the commissioners of an authority shall, within 15 days after receiving the petition, publish notice of a public hearing on the request at least once in a newspaper of general circulation published within the county and conduct the hearing.

(2) If after the hearing a majority of the commissioners finds that a weather emergency exists requiring such an operation, the authority may proceed with the activities needed to initiate and conduct the requested operation.

History: En. Sec. 12, Ch. 609, L. 1983.

Cross-References

Disaster and emergency services — intergovernmental cooperation, Title 10, ch. 3, part 2.

CHAPTER 4

RESERVED

CHAPTER 5

WATER COMMISSIONERS AND WATER MEDIATORS

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Part 1
Appointment and Duties

85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may make an order requiring the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters, including permittees and certificate holders, shall pay their proportionate share of fees and compensation. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by

the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

History: **En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(1) thru (3), (5), (6); amd. Sec. 1, Ch. 444, L. 1979; amd. Sec. 1, Ch. 246, L. 1983; amd. Sec. 1, Ch. 468, L. 1989; amd. Sec. 7, Ch. 604, L. 1989.**

Cross-References

Water Judges, Title 3, ch. 7, part 2.

Appointment of Water Commissioner after final decree, 85-5-407.

Apportionment of costs, 85-5-408.

Board power to provide sufficient water, 85-7-1907.

85-5-102. Appointment of chief commissioner. When the judge of the district court shall appoint two or more commissioners to admeasure and distribute the waters mentioned in the preceding section, he may appoint one of them chief commissioner and empower him to exercise direction and control over the other or others in the discharge of their duties. The judge may depose the one appointed chief commissioner from that position and appoint another in his stead whenever it appears to the judge that better service may be given the water users by making the change.

History: **En. Sec. 2, Ch. 43, L. 1911; re-en. Sec. 7137, R.C.M. 1921; re-en. Sec. 7137, R.C.M. 1935; R.C.M. 1947, 89-1002.**

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

85-5-103. Oath and bond. Each water commissioner so appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of his duties as commissioner and shall likewise file with said clerk a bond executed by himself, with two or more sureties, in such sum as the judge of said court may designate, to insure the faithful discharge of his duties.

History: **En. Sec. 3, Ch. 43, L. 1911; amd. Sec. 1, Ch. 12, Ex. L. 1919; re-en. Sec. 7138, R.C.M. 1921; re-en. Sec. 7138, R.C.M. 1935; R.C.M. 1947, 89-1003.**

Cross-References

Oaths, Title 1, ch. 6.

General duties of Clerk of District Court, 3-5-501.

Suretyship, Title 28, ch. 11, part 4.

85-5-104. Term of office. Every water commissioner so appointed shall hold his office for such time during the irrigation season of each year as may be designated by the judge in the order making such appointment. The judge, in his discretion, shall fix the date of the commencement of such term and may, in his discretion or when requested in writing by at least three persons entitled to the use of such waters, change the term for closing of the commissioner's service.

History: **En. Sec. 4, Ch. 43, L. 1911; amd. Sec. 1, Ch. 116, L. 1921; re-en. Sec. 7139, R.C.M. 1921; re-en. Sec. 7139, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1955; R.C.M. 1947, 89-1004.**

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

85-5-105. Power and duty to distribute water. Upon the issuance of such order, the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof, as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of chapter 1 of this title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. Such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter and all acts amendatory thereof and supplemental thereto; provided, that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of parts 1 through 3 of this chapter is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters.

History: En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(4).

Cross-References

Priority, 85-2-401.

District Court supervision of water distribution, 85-2-406.

85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the judge of the district court may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other source of conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of such waters.

History: En. Sec. 6, Ch. 43, L. 1911; re-en. Sec. 7141, R.C.M. 1921; re-en. Sec. 7141, R.C.M. 1935; R.C.M. 1947, 89-1006.

Cross-References

Board plan for acquisition and construction, 85-7-1901.

Entry upon land by Board or agent, 85-7-1903.

85-5-107. Record of daily distribution of water. Each water commissioner must keep a daily record of the amount of water distributed to each water user and must file a summary of such record with the clerk of the court monthly or seasonally, at the discretion of the district judge during his term of service, showing in detail the total amount of water distributed each day to each water user during such month or season and the amount of cost therefor, based upon the water commissioner's or commissioners' salary per day and other costs of the water commissioner approved by the district judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their record with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary in behalf of all of them.

History: En. Sec. 9, Ch. 43, L. 1911; re-en. Sec. 7144, R.C.M. 1921; re-en. Sec. 7144, R.C.M. 1935; R.C.M. 1947, 89-1009; amd. Sec. 1, Ch. 305, L. 1983.

Cross-References

General duties of Clerk of District Court, 3-5-501.

Measurement of water, 85-2-103.

District Court supervision of water distribution, 85-2-406.

85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of parts 1 through 3 of this chapter, each commissioner appointed by the court shall have authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and shall have the same powers as a sheriff or constable to arrest any and all persons interfering with the distribution made by him, to be dealt with according to law.

History: En. Sec. 8, Ch. 43, L. 1911; re-en. Sec. 7143, R.C.M. 1921; re-en. Sec. 7143, R.C.M. 1935; R.C.M. 1947, 89-1008.

Cross-References

Arrest, Title 46, ch. 6.

Entry upon land by Board or agent, 85-7-1903.

85-5-109. Failure to perform duty as a contempt of court. If any commissioner shall fail to perform any of the duties imposed upon him by the order of the judge of the district court, he shall be deemed guilty of a contempt of said court.

History: En. Sec. 7, Ch. 43, L. 1911; re-en. Sec. 7142, R.C.M. 1921; re-en. Sec. 7142, R.C.M. 1935; R.C.M. 1947, 89-1007.

Cross-References

Contempts, Title 3, ch. 1, part 5.

85-5-110. Appointment of water mediators — duties. (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the

water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) Nothing in this section allows a water mediator to require any valid water right holder to compromise or reduce any of his existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of his appropriation right or voluntarily ceases to use his appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of his appropriation right.

History: **En. Sec. 1, Ch. 625, L. 1989; amd. Sec. 1, Ch. 108, L. 1991.**

Cross-References

Environmental contingency account objectives, 75-1-1101.

85-5-111. Water commissioner and mediator education. The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(2) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(3) an outreach program that identifies persons who might serve as water commissioners or mediators.

History: **En. Sec. 2, Ch. 625, L. 1989.**

Part 2

Charges and Expenses

85-5-201. Distribution of water and related expenses. Every water commissioner appointed by the judge of the district court for that purpose shall have the authority to admeasure and distribute to the parties interested, under such decree, permit, or certificate, the water to which those who are parties to the decree or holders of a permit or certificate, or privy thereto, are entitled, according to their priority as established by the decree, permit, or certificate. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters. Such expense shall be assessed against and paid by the party or parties for whom such services in the repair of the ditch or ditches and the making of any dams or headgates were necessary. In the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred.

History: **En. Sec. 5, Ch. 43, L. 1911; re-en. Sec. 7140, R.C.M. 1921; amd. Sec. 2, Ch. 125, L. 1925; re-en. Sec. 7140, R.C.M. 1935; R.C.M. 1947, 89-1005; amd. Sec. 2, Ch. 246, L. 1983.**

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

Priority, 85-2-401.

Irrigation districts — indebtedness, bonds, and bankruptcy, Title 85, ch. 7, part 20.

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

85-5-202. Repair expenses. The judge may also allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of his duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of such stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all such expenses, and the cost thereof shall be taxed against the party or parties for whose benefit the same were incurred. In the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred.

History: En. Sec. 10, Ch. 43, L. 1911; re-en. Sec. 7145, R.C.M. 1921; amd. Sec. 3, Ch. 125, L. 1925; re-en. Sec. 7145, R.C.M. 1935; R.C.M. 1947, 89-1010.

Cross-References

Board powers over district property, 85-7-1908.

85-5-203. Telephone expenses. The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency. When there are two or more commissioners acting under the judge's order, reasonable expenses incurred in communicating with each by telephone or with the judge of the district court, in order to carry on the distribution of the waters harmoniously and in accordance with the decree, shall be deemed a necessary expense. These expenses shall be reported by the water commissioner or commissioners at the close of the season and shall be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season.

History: En. Sec. 11, Ch. 43, L. 1911; re-en. Sec. 7146, R.C.M. 1921; re-en. Sec. 7146, R.C.M. 1935; R.C.M. 1947, 89-1011.

Cross-References

Water Judges, Title 3, ch. 7, part 2.

85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water commissioners, the clerk of court shall forthwith notify by letter each person mentioned in such report:

(a) of the amount he is made liable for by such report;

(b) that objections to such report and the amount so taxed against him may be made by any person interested therein within 20 days after the date of the mailing of said notice; and

(c) unless objections thereto are filed, an order will be made by the judge of said court finally fixing and determining the amount due from each of said water users.

(2) The affidavit of the clerk that he has mailed a notice to each person mentioned in the report at such person's last known post-office address, in the

usual manner, shall be deemed prima facie evidence that the person received that notice provided for in this section.

History: **En. Sec. 12, Ch. 43, L. 1911; re-en. Sec. 7147, R.C.M. 1921; amd. Sec. 1, Ch. 11, L. 1923; amd. Sec. 1, Ch. 45, L. 1927; re-en. Sec. 7147, R.C.M. 1935; R.C.M. 1947, 89-1012.**

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-5-205. Objections to expenses — hearing. At the expiration of the 20 days' notice, as provided for in the preceding section, if objections to said report have been filed or a motion to retax the same has been made, the court or judge shall fix a time for the hearing of such objections or motion to retax, which time of hearing shall be as soon as the judge or a court can conveniently hear the same. Any person objecting to said report shall be entitled to at least 5 days' notice of the date and time of such hearing. At such hearing the court or judge shall hear and determine the motion or objections and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the 20 days, as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter.

History: **En. Sec. 13, Ch. 43, L. 1911; re-en. Sec. 7148, R.C.M. 1921; amd. Sec. 2, Ch. 11, L. 1923; re-en. Sec. 7148, R.C.M. 1935; R.C.M. 1947, 89-1013.**

85-5-206. Effect of order fixing fees. After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, it shall have all the force and effect of a judgment as against the person to whom the water was admeasured and for whose benefit it was used. When such expense of commissioner or commissioners has been assessed against the land for which such service of the commissioner or commissioners has been rendered, it shall constitute a lien against said land. Execution may issue upon the order, as upon a judgment, by direction of the court or judge upon the application of any person interested therein. The water commissioner, at his discretion, may withhold further admeasurement or distribution of water to any person otherwise entitled thereto until such person shall have paid all fees, compensation, and expenses of such water commissioner or commissioners so fixed by the court and apportioned and charged to such person and likewise may withhold the admeasurement and distribution of water from any land against which there exists any such lien as aforesaid, until such lien shall have been fully discharged.

History: **En. Sec. 14, Ch. 43, L. 1911; re-en. Sec. 7149, R.C.M. 1921; amd. Sec. 4, Ch. 125, L. 1925; amd. Sec. 1, Ch. 39, L. 1929; re-en. Sec. 7149, R.C.M. 1935; R.C.M. 1947, 89-1014.**

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

Execution of judgment, Title 25, ch. 13.

District Court supervision of water distribution, 85-2-406.

Part 3
Rights and Duties of Water Users

85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than he is receiving or to a right prior to that allowed him by the water commissioner or water commissioners may file his written complaint, duly verified, setting forth the facts of the claim. Thereupon the judge shall fix a time for the hearing of such petition and shall direct that such notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for the hearing, the judge must hear and examine the complainant and other parties as may appear to support or resist such claim and examine the water commissioner or water commissioners and witnesses as to the charges contained in the complaint.

(2) Upon the determination of the hearing, the judge shall make such findings and order as he considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, the judge shall give the proper instructions for such distribution. The judge may remove any water commissioner and appoint some other person in his stead if he considers that the interests of the parties in the waters mentioned in the decree will be best subserved thereby, and if it appears to the judge that the water commissioner has willfully failed to perform his duties, he may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make such order as to the payment of costs of the hearing as appears to him to be just and proper.

History: En. Sec. 15, Ch. 43, L. 1911; re-en. Sec. 7150, R.C.M. 1921; amd. Sec. 5, Ch. 125, L. 1925; re-en. Sec. 7150, R.C.M. 1935; amd. Sec. 13, Ch. 460, L. 1977; R.C.M. 1947, 89-1015.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Appeals from final decree, 85-2-235.

85-5-302. Maintenance of headgates and measuring devices. All persons using water from any stream or ditch whereon a water commissioner is appointed are required to have suitable headgates at the point where a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it is the duty of the water commissioner not to apportion or distribute any water through the ditch. The commissioner shall notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of any stream or ditch or performing necessary labor or expenses to divert water to any ditch. The sending of a certified letter to the last-known post-office address of any interested party is prima facie evidence of the fact that he was duly notified. Any work in the way of repairing a ditch made necessary by any emergency may be done without such notice when injury would result from delay.

History: En. Sec. 7, Ch. 64, L. 1905; re-en. Sec. 4890, Rev. C. 1907; re-en. Sec. 7151, R.C.M. 1921; amd. Sec. 6, Ch. 125, L. 1925; re-en. Sec. 7151, R.C.M. 1935; R.C.M. 1947, 89-1016; amd. Sec. 4, Ch. 432, L. 1989.

Cross-References

Measurement of water, 85-2-103.

District Court supervision of water distribution, 85-2-406.

Conduction of water, 85-2-414.

Regulation, supervision, apportionment, and control of water distribution, 85-7-1922.

Part 4

Water Ditches Under Joint or Corporate Control

85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. Whenever a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in said ditch, any partner, tenant in common, or stockholder may commence an action in any court of competent jurisdiction to determine the rights of the respective parties to the use of said waters and may join in his petition a prayer for the appointment of a water commissioner to apportion and distribute the waters of said ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action.

History: En. Sec. 1, Ch. 181, L. 1919; re-en. Sec. 7152, R.C.M. 1921; re-en. Sec. 7152, R.C.M. 1935; R.C.M. 1947, 89-1017.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

Water Courts — jurisdiction, Title 3, ch. 7, part 5.

District Court supervision of water distribution, 85-2-406.

Duty of purchaser to dig ditches, 85-2-416.

Board agreements for joint operation or cooperation, 85-7-1905.

85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in such action, the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of said ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint such commissioner without notice, and when such commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court or judge to vacate such appointment or to modify the order as to the distribution of the waters of said ditch. The court or judge on such hearing, in his discretion, may affirm, vacate, or modify the order previously made. Each water commissioner so appointed shall subscribe to an oath of office before commencing the discharge of his duties.

History: Ap. p. Sec. 2, Ch. 181, L. 1919; re-en. Sec. 7153, R.C.M. 1921; re-en. Sec. 7153, R.C.M. 1935; Sec. 89-1018, R.C.M. 1947; Ap. p. Sec. 3, Ch. 181, L. 1919; re-en. Sec. 7154, R.C.M. 1921; re-en. Sec. 7154, R.C.M. 1935; Sec. 89-1019, R.C.M. 1947; R.C.M. 1947, 89-1018, 89-1019(part).

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

Final decree, 85-2-234.

85-5-403. Division of water. It shall be the duty of the water commissioner to divide the waters of said ditch between the owners, tenants in common, or stockholders in proportion to their respective rights, as set forth in the complaint or in such other manner or proportion as the court or judge may direct.

History: En. Sec. 3, Ch. 181, L. 1919; re-en. Sec. 7154, R.C.M. 1921; re-en. Sec. 7154, R.C.M. 1935; R.C.M. 1947, 89-1019(part).

Cross-References

District Court supervision of water distribution, 85-2-406.

85-5-404. Authority of commissioner. Such commissioner shall have authority to enter upon said ditch; open, close, and set headgates; and do whatever else is necessary to apportion and distribute the waters of said ditch to the respective parties according to their respective rights.

History: En. Sec. 4, Ch. 181, L. 1919; re-en. Sec. 7155, R.C.M. 1921; re-en. Sec. 7155, R.C.M. 1935; R.C.M. 1947, 89-1020.

Cross-References

Entry upon land by Board or agent, 85-7-1903.

85-5-405. Compensation and expenses. The court shall fix the compensation of such commissioner and the term of his employment and shall make an order apportioning the amount of such compensation among the several owners, tenants in common, or stockholders of said ditch, according to their respective rights and interest in said ditch, which amounts so apportioned shall be taxed as costs in the action against the respective parties.

History: En. Sec. 5, Ch. 181, L. 1919; re-en. Sec. 7156, R.C.M. 1921; re-en. Sec. 7156, R.C.M. 1935; R.C.M. 1947, 89-1021.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

85-5-406. Interference with actions of commissioner. Any person opening or closing a headgate after being set by such commissioner or who in any manner interferes with such commissioner in the discharge of his duties shall be deemed guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases.

History: En. Sec. 6, Ch. 181, L. 1919; re-en. Sec. 7157, R.C.M. 1921; re-en. Sec. 7157, R.C.M. 1935; R.C.M. 1947, 89-1022.

Cross-References

Contempts, Title 3, ch. 1, part 5.

85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in an action to the use of the waters flowing in a ditch are adjudicated, the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of the ditch, may, in the exercise of the judge's discretion, appoint a water commissioner to divide, apportion, and distribute the waters of the ditch to the respective parties according to their respective rights as set forth in the decree. When a commissioner is appointed under the provisions of this chapter to apportion and distribute the waters of the stream from which the water flowing in a ditch is taken, the commissioner shall, when directed by the judge or court, apportion and distribute the waters of the ditch according to the decree by which the rights of the respective owners were adjudicated.

History: En. Sec. 7, Ch. 181, L. 1919; re-en. Sec. 7158, R.C.M. 1921; re-en. Sec. 7158, R.C.M. 1935; R.C.M. 1947, 89-1023; amd. Sec. 301, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in second sentence substituted "this chapter" for "85-5-101 through 85-5-301"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Appointment of Water Commissioners, 3-7-211.

Appeals from final decree, 85-2-235.

85-5-408. Apportionment of costs. (1) When a commissioner is appointed upon the application of an owner or owners of a ditch, the court may fix the compensation of the commissioner and the term of the commissioner's employment. The court shall make an order apportioning the amount of compensation among the several owner or owners, tenants in common, or stockholders of the ditch according to their respective rights and interest. The order has the effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, an order of apportionment of expense is made against the land for which the water was used, it has the effect of a lien against the land to which the apportionment was made. Execution may issue upon the order as upon a judgment by direction of the court, upon the application of any person interested in the order.

(2) When a commissioner is appointed under the provisions of this chapter to distribute the waters of the stream from which the waters flowing in a ditch are taken and to apportion and distribute the waters of the ditch according to the rights of the respective owners of the waters, the judge, in the judge's discretion, may, in addition to the apportionment taxed against the respective owners of the waters of the stream, apportion and tax the amount, if any, that the owners of the ditch shall pay in addition to the amount taxed under the provisions of this chapter.

History: En. Sec. 8, Ch. 181, L. 1919; re-en. Sec. 7159, R.C.M. 1921; amd. Sec. 7, Ch. 125, L. 1925; re-en. Sec. 7159, R.C.M. 1935; R.C.M. 1947, 89-1024; amd. Sec. 302, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), in two places, substituted "this chapter" for "85-5-101 through 85-5-301"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Execution of judgment, Title 25, ch. 13.

Apportionment of fees and expenses, 85-5-204.

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

CHAPTER 6

WATER USERS' ASSOCIATIONS

Part 1 — General Provisions

85-6-101. Power to levy new assessments.
85-6-102. Assessments to be equitable.
85-6-103. Transfer of shares of stock.
85-6-104. Assessment of shares of stock.
85-6-105. Division of irrigation project into districts.

85-6-106. Vacancies in board of directors.
85-6-107. Liability of associations.
85-6-108. Exemption from payment of fees.
85-6-109. Operation of projects with water users' association — definitions.

Part 1
General Provisions

85-6-101. Power to levy new assessments. Whenever any water users' association, having a contract with the United States government for construction of works and delivery of water and also a contract with its shareholders, organized under and by virtue of the corporation laws of this state and in conformity with the laws of the United States, shall have levied an assessment or assessments upon its capital stock, which assessment or assessments or any part thereof remain uncollected, such association shall have the power to discharge all assessments theretofore levied and to levy in lieu thereof an assessment which shall include all previous assessments levied upon the shareholders of said association and to give credit for all payments on assessments theretofore made.

History: En. Sec. 1, Ch. 141, L. 1917; re-en. Sec. 7160, R.C.M. 1921; re-en. Sec. 7160, R.C.M. 1935; R.C.M. 1947, 89-1101.

Cross-References

Corporations, Title 35, ch. 1, 2.

Exemption from license fee and license taxes, 85-6-108.

Irrigation districts — United States contracts, 85-7-2118, 85-7-2119.

85-6-102. Assessments to be equitable. All assessments authorized hereunder shall be equitable and be based upon benefits received or available.

History: En. Sec. 2, Ch. 141, L. 1917; re-en. Sec. 7161, R.C.M. 1921; re-en. Sec. 7161, R.C.M. 1935; R.C.M. 1947, 89-1102.

Cross-References

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.

Conservancy districts — assessments, 85-9-601.

85-6-103. Transfer of shares of stock. Shares of stock of water users' associations organized in conformity with the requirements of the laws of the United States and the state of Montana and under the Reclamation Act of June 17, 1902, (which shares of stock, by the articles of incorporation of said association, are inseparably appurtenant to the lands for which they are subscribed) shall, upon the presentation of proof to such association of the transfer of any of said land, be transferred on the books of said association, by the proper officers of the association, to the grantee or successor in title to said land.

History: En. Sec. 1, Ch. 29, L. 1915; re-en. Sec. 7162, R.C.M. 1921; re-en. Sec. 7162, R.C.M. 1935; R.C.M. 1947, 89-1103.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

85-6-104. Assessment of shares of stock. The assessable stock of any such water users' association may at the time of any assessment made, after the major portion of such irrigation project is completed and the irrigable area thereunder determined, be one share for each irrigable acre, and appropriate bylaws of the association may provide for the discharge of assessments levied on stock appurtenant to lands then determined to be nonirrigable.

History: En. Sec. 2, Ch. 29, L. 1915; re-en. Sec. 7163, R.C.M. 1921; re-en. Sec. 7163, R.C.M. 1935; R.C.M. 1947, 89-1104.

Cross-References

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.

Conservancy districts — assessments, 85-9-601.

85-6-105. Division of irrigation project into districts. Such water users' association shall be permitted to divide the area under such irrigation project into as many districts as there are directors provided for in its articles of incorporation. Each district shall elect one director for a term not to exceed 5 years. At the first election held to elect directors under the provisions of this chapter, each district shall elect one director, who shall hold office for such a term of years as the bylaws shall provide, and thereafter a director shall be elected in the district and at the annual election held just prior to the expiration of the term of office of the director of that district.

History: En. Sec. 3, Ch. 29, L. 1915; re-en. Sec. 7164, R.C.M. 1921; re-en. Sec. 7164, R.C.M. 1935; R.C.M. 1947, 89-1105.

Cross-References

Irrigation districts, Title 85, ch. 7.

Organization of districts, Title 85, ch. 7, part 15.

Elections, Title 85, ch. 7, part 17.

85-6-106. Vacancies in board of directors. In case of a vacancy in the board of directors from any cause, the board shall fill such vacancy by appointment to hold to the end of that fiscal year, and a director shall be elected at the annual election in the district where such vacancy occurs to fill the unexpired term of such vacancy.

History: En. Sec. 4, Ch. 29, L. 1915; re-en. Sec. 7165, R.C.M. 1921; re-en. Sec. 7165, R.C.M. 1935; R.C.M. 1947, 89-1106.

Cross-References

Irrigation districts — vacancies among Commissioners, 85-7-1703.

85-6-107. Liability of associations. An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions. The state of Montana is not liable for injury to a person or property that occurs on a works as a result of a failure by a water users' association to maintain the works in a safe working and operating condition.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(2).

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability, Title 27, ch. 1, part 7.

Liability of and to ostensible corporations, 35-1-119.

85-6-108. Exemption from payment of fees. Any water users' association organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the Reclamation Act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders shall be exempt from the payment of any license fee and from the payment of any annual license tax and, upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of $40 for the filing and recording of such articles of incorporation and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907; re-en. Sec. 147, R.C.M. 1921; re-en. Sec. 147, R.C.M. 1935; amd. Sec. 9, Ch. 117, L. 1961; R.C.M. 1947, 25-110; amd. Sec. 1, Ch. 326, L. 1979.

Cross-References

Fees and charges, Title 35, ch. 1, part 12.

85-6-109. Operation of projects with water users' association — definitions. (1) As used in this section, the following definitions apply:

(a) "Association" means a water users' association.

(b) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association must be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the district court in any county where all or part of the project works is located or to the district court in Lewis and Clark County.

(3) If an appeal is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project that involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition. The petition must be signed by stockholders of the association who represent 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association who represent 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature.

History: **En. 89-1107 by Sec. 1, Ch. 253, L. 1977; R.C.M. 1947, 89-1107; amd. Sec. 3, Ch. 156, L. 1981; amd. Sec. 2, Ch. 425, L. 1991; amd. Sec. 478, Ch. 418, L. 1995; amd. Sec. 303, Ch. 42, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 42 in (3), at beginning, substituted "an appeal" for "a complaint"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Management of property — water contracts, 85-1-211.

CHAPTER 7

IRRIGATION DISTRICTS

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85-7-1003. Contents of petition.
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85-7-1007. Court decree and sale of assets.
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Part 1
Creation of Districts — Generally

Part Cross-References

Definition of irrigable land, 85-7-2205.

85-7-101. Creation of irrigation districts by percentage of titleholders. (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing 60% of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this part and part 15. When any of such land sought to be included in such irrigation district is covered by mortgage or other lien, then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district.

(2) Irrigation districts may be formed in order to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted or under any act of congress which shall permit of the performance by the United States of work in this state for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation district. In all irrigation districts organized in connection with United States reclamation projects, a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of this part may propose the establishment and organization of such district.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(1).

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

Mortgages of real property, Title 71, ch. 1, part 2.

Liens, Title 71, ch. 3.

Contracts with United States, 85-1-221.

Conformity to federal regulations authorized, 85-1-222.

Authority for joint operation of districts, 85-7-1601.

Requirements for petition to eliminate lands, 85-7-1803.

Creation of drainage districts, Title 85, ch. 8, part 1.

85-7-102. Evidence of title. (1) The following documents are sufficient evidence of title for the purpose of this chapter:

(a) the certificate of the county clerk and recorder;

(b) the certificate of the department of natural resources and conservation; or

(c) records of ownership prepared by licensed title insurance producers.

(2) When lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to the lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department showing the payments on account of purchase is evidence of title to the lands under this chapter.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(2); amd. Sec. 1, Ch. 382, L. 1987; amd. Sec. 59, Ch. 16, L. 1991; amd. Sec. 479, Ch. 418, L. 1995.

Cross-References

Documents subject to recording, 7-4-2613.

Real property — what may be recorded — recording copy in another county, 70-21-201.

85-7-103. Report by department of natural resources and conservation required. (1) Before any such district shall be established, there shall be presented to the district court, at the hearing on the petition for such establishment, a written report or opinion from the department of natural resources and conservation on the engineering features involved and the possibilities of water supplies, accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in 85-7-104 and of all maps and other papers filed with the same shall be filed with the department at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the department in the investigation and report upon the proposed district shall be certified with the report and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment, and in event such petition be denied, then such costs shall be paid by the petitioners. The department shall, within a period of 120 days from the filing of said petition with the department, render its report, as herein provided, to the district court.

(2) Such report or opinion shall not be requested or obtained and shall not be necessary whenever it is proposed to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted or under any act of congress which shall permit of the performance by the United States of work in this state for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(3).

Cross-References

Department research and information, 75-5-212.

Aquatic ecosystem protections, Title 75, ch. 7.

Department powers over state waters, 85-1-204.

Final decree of water rights, 85-2-234.

Authority for joint operation of districts, 85-7-1601.

Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition, 85-7-1831.

Drainage districts, Title 85, ch. 8.

85-7-104. Petition for organization. (1) For the purpose of establishing and organizing an irrigation district hereunder, a petition signed by the required number of holders of title or evidence of title to lands within the proposed district mentioned in 85-7-101 shall be filed with the clerk of the district court of the county in which the greatest portion of the lands of the proposed district is located. The petition shall set forth:

(a) the name suggested for the proposed district;

(b) a general description of the lands to be included in the proposed district;

(c) the names of the holders of title or evidence of title to the lands in the proposed district, ascertained in the manner mentioned in 85-7-101 and 85-7-102, and if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;

(d) generally, the source from which the lands in the proposed district are to be irrigated and the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district;

(e) a prayer that the lands embraced within the proposed district be organized as an irrigation district according to the applicable provisions of this chapter.

(2) The petition shall be accompanied by:

(a) a map or plat of the proposed district; and

(b) a good and sufficient bond or undertaking, to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions of subsection (1), to pay all costs in and about the proceedings preliminary to the organization of the district in the event that the organization is not effected.

(3) Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands does not render invalid any proceedings hereunder or deprive the district court of jurisdiction of the subject matter. Such misdescribed lands or misnamed persons may not be included in the district.

History: En. Sec. 2, Ch. 146, L. 1909; re-en. Sec. 7167, R.C.M. 1921; re-en. Sec. 7167, R.C.M. 1935; amd. Sec. 14, Ch. 460, L. 1977; R.C.M. 1947, 89-1202.

Cross-References

General duties of Clerk of District Court, 3-5-501.

Department powers over state waters, 85-1-204.

85-7-105. Order and notice of hearing on petition. (1) On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for 2 successive calendar weeks in some newspaper published in the county where the petition is filed a copy of such petition, together with a notice stating the time and place fixed by the district court when and where the hearing on said petition will be had. If any portion of the lands within the proposed district lies within any other county or counties, then said petition and notice shall be published as above provided in a newspaper published in each such other county. If there be no newspaper published in such county, said petition and notice may be published in an adjoining county.

(2) The first publication of said petition and notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing.

(3) If any holder of title or evidence of title to lands within the proposed district is a nonresident of the county or counties in which the proposed district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident whose post-office address is stated in said petition.

(4) The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

History: En. Sec. 3, Ch. 146, L. 1909; re-en. Sec. 7168, R.C.M. 1921; re-en. Sec. 7168, R.C.M. 1935; R.C.M. 1947, 89-1203.

Cross-References

General duties of Clerk of District Court, 3-5-501.

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-106. Hearing on petition. (1) At the time specified in the notice mentioned in 85-7-105, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time, not exceeding 3 weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any interested person or persons, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing all interested persons whose lands or rights may be damaged or benefited by the organization of the district or by the irrigation works or improvements therein or to be acquired or constructed may appear and contest the necessity or utility of the proposed district or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) The court shall hear and determine whether the requirements of 85-7-101 through 85-7-105 have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(1), (2).

85-7-107. Court decision — appointment of commissioners. (1) (a) The court may make such changes in the proposed district as may be considered advisable or as fact, right, and justice may require. Land which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of the proposed district may not be excluded from the proposed district if the owner or owners of the lands file in the district court a written request that the lands be included.

(b) Lands which will not, in the judgment of the court, be benefited by irrigation from the works of the proposed district; which are already under irrigation; which have appurtenant water rights; or which can be irrigated from sources more feasible than the proposed district may not be included in the district unless the owner of such lands consents in writing to the inclusion.

(c) Notwithstanding the provisions of subsection (1)(b), whenever a district is formed to cooperate with the United States, lands previously irrigated and having appurtenant water rights may be included within the district boundaries if it appears to the court that the lands will be benefited by inclusion.

(d) All lands having appurtenant water rights, served by an irrigation works system supplying more than 10,000 acres, may, in the discretion of the court, be included in the proposed district upon petition by at least a majority, both in number and acreage, of the holders of title or evidence of title to the lands served by the irrigation system and having appurtenant water rights.

(e) Lands of the district need not be contiguous. The location of a particular tract in the proposed district is not a bar to exclusion.

(2) For purposes of including or excluding land from a proposed district, the court may subdivide any tract into 40-acre or smaller parcels.

(3) If, on final hearing, it is found by the court that the petition does not substantially comply with the requirements of this part or that the facts stated are not sustained by the evidence, the court shall dismiss the petition at the cost of the petitioners and make and enter an order to that effect. If it is found that the petition substantially complies with the requirements and that the facts stated are sustained by the evidence, the court shall make and enter an order:

(a) setting forth findings and allowing the petition;

(b) establishing the proposed district;

(c) giving accurate descriptions of the lands included within the proposed district;

(d) dividing the proposed district into three, five, or seven divisions, as may be advisable in view of the size of the district;

(e) appointing as commissioner one competent person for each division of the district having the qualifications as provided by 85-7-1501.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(3) thru (5).

Cross-References

Alteration and determination of district acreage, Title 85, ch. 7, part 18.

85-7-108. Effect of court findings and order. The finding and order are conclusive upon all the owners of lands within the district that they have assented to and accepted the applicable provisions of this chapter and are final unless appealed from to the supreme court within 60 days from the day of entry of the order. A copy of the order, duly certified to by the clerk of the district court, shall be filed for record within 30 days after the order is made and entered with the county clerk and recorder of the county where the lands included within the district are situated. Lands not situated in the county in which the copy is filed shall be omitted from the copy.

History: **En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(6).**

Cross-References

General duties of Clerk of District Court, 3-5-501.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

85-7-109. Irrigation district as public corporation. Every irrigation district so established is a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of this chapter.

History: **En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(7).**

Cross-References

Business corporations, Title 35, ch. 1.

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

85-7-110. Districts organized under earlier laws. Any irrigation district organized under the provisions of Chapter 70, Laws of 1907, and Chapter 16, Laws of 1909, shall be governed by the applicable provisions of this chapter. Whenever any irrigation district shall have already been organized under the provisions of said session laws and shall have issued bonds or entered into any contract of purchase or construction, nothing contained in this chapter shall be construed as affecting the rights of the holders of said bonds or of any person, persons, corporation, or association party or parties to any such contract with said district, under or by virtue of any of the provisions of said session laws. If a majority of the holders of title or evidence of title to lands included in the district heretofore organized under the provisions of said session laws (said holders of title or evidence of title, also representing a majority in acreage of irrigable lands of said district) shall petition under the provisions of this part for the organization of a new district, including not less than four-fifths of the irrigable lands embraced within such districts so organized, and shall pray for an order disorganizing such district and vacating all proceedings therein, the court shall have jurisdiction to proceed under this part and part 15 to organize such new district and, in making its final order creating such new district, shall also make an order vacating and disorganizing the old district. All money or property belonging to such old district shall be and become the money and property of such new district. Should any lands included in the old district not be included in the new district, the commissioners of the latter shall pay to the owner or owners of such land their just proportion thereof, on the basis of the last assessment made.

History: **En. Sec. 67, Ch. 146, L. 1909; re-en. Sec. 7263, R.C.M. 1921; re-en. Sec. 7263, R.C.M. 1935; R.C.M. 1947, 89-2110(part).**

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Dissolution of districts, Title 85, ch. 7, part 10.

Part 2

Creation of Districts — Adjudicated Streams

85-7-201. Creation of districts by owners of water of adjudicated streams. It is the purpose and intention of this part, in the furtherance of public welfare, to provide an effective public agency for the improvement, development, and maintenance of certain existing irrigation systems in cases where administration thereof, through the agency of a water commissioner and the existing statutes, is not effective.

History: En. Sec. 1, Ch. 117, L. 1933; re-en. Sec. 7187.4, R.C.M. 1935; R.C.M. 1947, 89-1318.

85-7-202. Application of part. This part shall apply only when 20 or more owners of land with water rights appurtenant thereto are being served by one stream and its branches or from one source of water supply and in which the rights to the use of water shall have been determined by decree of a court of competent jurisdiction and at least 2,000 acres of land, contiguous in location or of reasonably compact area, are being served by the single stream or source.

History: En. Sec. 2, Ch. 117, L. 1933; re-en. Sec. 7187.5, R.C.M. 1935; amd. Sec. 20, Ch. 460, L. 1977; R.C.M. 1947, 89-1319.

Cross-References

Water Courts, Title 3, ch. 7.

85-7-203. Petition, hearing, and order. Whenever the owners of land and water rights, as described in 85-7-202, desire to organize for the purposes mentioned in this part, a petition to that effect, signed by not less than 60% of the individual landowners who represent not less than 51% of the irrigable acres to be affected by the proposed district and 51% of the cubic feet of water per second decreed or adjudicated in the stream from which the irrigation district is to operate, shall be filed with the clerk of the district court of the county or counties in which the district is to be created. For the purpose of determining whether the requirements of acreage and cubic feet of water per second have been met by the petition, water diverted from the adjudicated stream and distributed under irrigation districts other than the one to be created under this part may not be considered; however, such water and acreage shall be required to pay all assessments the same as other water and acreage affected by irrigation districts created under this part. Upon filing of the petition, the court shall set a date for a hearing on the petition and a written notice shall be mailed, not less than 5 days prior to the hearing, to each landowner or water right owner affected by the proposed district. If the court finds from such hearing that an irrigation district, as prayed for in the petition, is feasible and practical, the court shall issue an order creating the irrigation district. The order shall constitute the authority for the district to function for the purposes and intent as outlined in this part. The court shall appoint five commissioners who are landowners or water right owners affected by such district to act until the first annual meeting.

History: En. Sec. 3, Ch. 117, L. 1933; re-en. Sec. 7187.6, R.C.M. 1935; amd. Sec. 21, Ch. 460, L. 1977; R.C.M. 1947, 89-1320.

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-7-204. Election of board of trustees. On the first Monday in March of each year after the creation of the district, a meeting of the water right owners of such district shall be called, time and place for such meeting to be published in at least two issues of the local paper prior to such meeting, and at such meeting a board of trustees of five members to serve for 1 year shall be elected by ballot.

History: En. Sec. 4, Ch. 117, L. 1933; re-en. Sec. 7187.7, R.C.M. 1935; R.C.M. 1947, 89-1321.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-205. Duty of trustees, levy, and indebtedness. The board of trustees may develop the source of supply; clean, improve, and develop the channel of the stream; and do and perform other work on the main distributing system as will be beneficial to the better distribution of the waters of the decreed water right stream and may cover the expenses of such work by levy. Whenever waters of the stream under the irrigation district created by this part are commingled with other waters or it is difficult to determine how many acres are irrigable by the water rights held in the stream, the acre basis of levy shall be determined by the number of cubic feet of water per second owned by such party or parties at the rate of .025 cubic feet of water per second to the acre. The board may not issue bonds or incur any indebtedness other than warrant indebtedness under the limitations imposed by law.

History: En. Sec. 5, Ch. 117, L. 1933; re-en. Sec. 7187.8, R.C.M. 1935; amd. Sec. 22, Ch. 460, L. 1977; R.C.M. 1947, 89-1322; amd. Sec. 1, Ch. 112, L. 1981.

Cross-References

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

Indebtedness, bonds, and bankruptcy, Title 85, ch. 7, part 20.

85-7-206. Basis and apportionment of annual tax. The annual tax levy and the apportionment and distribution of the total amount required to be raised in any year shall be had and done in accordance with the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter.

History: En. Sec. 6, Ch. 117, L. 1933; re-en. Sec. 7187.9, R.C.M. 1935; R.C.M. 1947, 89-1323.

Cross-References

Taxes and assessments of irrigation districts, Title 85, ch. 7, part 21.

85-7-207. Part not to conflict with other regulations. This part is not intended to conflict in any way with present statutes governing the appointment and duties of water commissioners on adjudicated water right streams or the operation of statutes as to the jurisdiction of courts over such commissioners and water rights and distribution of water under court decree but is for the sole purpose of making it possible for users of water out of decreed water right streams to improve the stream channel and conserve water in the best possible manner through the agency of an irrigation district, as provided for in this part.

History: En. Sec. 7, Ch. 117, L. 1933; re-en. Sec. 7187.10, R.C.M. 1935; R.C.M. 1947, 89-1324.

Cross-References

Water Courts, Title 3, ch. 7.

Appointment of Water Commissioners, 3-7-211, 85-5-101, 85-5-402, 85-5-407.

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

85-7-208. Dissolution of district. A district created under this part may be dissolved by court order upon proper hearing and in the same manner as this part provides for its creation.

History: En. Sec. 8, Ch. 117, L. 1933; re-en. Sec. 7187.11, R.C.M. 1935; R.C.M. 1947, 89-1325.

Cross-References

Dissolution of districts, Title 85, ch. 7, part 10.

Part 3

Creation of Districts
Common Water Supply

85-7-301. Creation of district by owners of rights in common water supply. (1) It is a purpose and intention of this part, in the furtherance of the public welfare, to provide an effective public agency for the improvement, development, operation, maintenance, and administration of certain existing irrigation systems in cases where administration thereof through the agency of a water commissioner is not effective.

(2) It is a purpose and intention of this part to extend to irrigation districts organized hereunder the powers, duties, and status of the public corporations organized under the irrigation district laws of the state of Montana, as the same may now or hereafter exist; provided, that neither such districts nor the board of commissioners thereof shall have any power or authority to issue bonds or incur indebtedness, other than warrant indebtedness, under the limitations proposed by law. This part does not contemplate the acquisition by the district of the existing water, water rights, or system or works owned by the respective water right owners within the district.

History: En. Secs. 1, 8, Ch. 100, L. 1925; re-en. Secs. 7264.1, 7264.8, R.C.M. 1935; R.C.M. 1947, 89-2111, 89-2118.

Cross-References

Business corporations, Title 35, ch. 1.

85-7-302. Application of part. This part shall apply only when more than 15 owners of land, with water rights appurtenant thereto, shall have diverted water by means of a single intake from the source of supply and shall have provided a single canal for conveying such water to the branches and laterals of an established irrigation system, serving at least 1,000 acres of land contiguous in location or of reasonably compact area and in which the rights to the use of the water shall have been determined by decree of a court of competent jurisdiction.

History: En. Sec. 2, Ch. 100, L. 1925; re-en. Sec. 7264.2, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1943; R.C.M. 1947, 89-2112.

85-7-303. Establishment of district. Whenever the owners of land and water rights, situated as described in 85-7-302, desire to organize for the purposes mentioned in this part, such owners may propose the establishment and organization of an irrigation district under the provisions of this chapter, except part 2, insofar as such laws are applicable hereto and not in conflict with the purposes and provisions of this part.

History: En. Sec. 3, Ch. 100, L. 1925; re-en. Sec. 7264.3, R.C.M. 1935; R.C.M. 1947, 89-2113.

85-7-304. Sections not applicable. The provisions of 85-7-1911(1) and (2), 85-7-1934, 85-7-1935, 85-7-1941 through 85-7-1943, 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, 85-7-2032, and 85-7-2141 shall have no application to the organization of irrigation districts under this part.

History: En. Sec. 4, Ch. 100, L. 1925; re-en. Sec. 7264.4, R.C.M. 1935; R.C.M. 1947, 89-2114.

85-7-305. Apportionment of water by commissioners. The board of commissioners shall apportion the water for irrigation among the lands of the district in a just and equitable manner and in compliance with the decree adjudicating the rights thereto, but the maximum amount apportioned to any land shall be the amount that can be beneficially used thereon.

History: En. Sec. 5, Ch. 100, L. 1925; re-en. Sec. 7264.5, R.C.M. 1935; R.C.M. 1947, 89-2115.

Cross-References

Priority, 85-2-401.

85-7-306. Development of water supply — levy for expenses. The board of commissioners of such irrigation district shall have authority to develop the source of supply and increase the means of distribution of water to the end that all owners of water rights under the system shall receive the amount of water which can be beneficially used upon their lands within the district. The board may levy against each irrigable acre of land in the district on account of administrative expenses, cost of maintenance and repairs, development of water supply, or enlargement of distribution facilities.

History: En. Sec. 6, Ch. 100, L. 1925; re-en. Sec. 7264.6, R.C.M. 1935; R.C.M. 1947, 89-2116; amd. Sec. 2, Ch. 112, L. 1981.

Cross-References

Beneficial use defined, 85-2-102.

85-7-307. Tax levy. The annual tax levy and the apportionment and distribution of the total amount required to be raised in any year shall be had and done in accordance with the provisions and limitations of law applicable to other irrigation districts organized under parts 1 and 15 of this chapter.

History: En. Sec. 7, Ch. 100, L. 1925; re-en. Sec. 7264.7, R.C.M. 1935; R.C.M. 1947, 89-2117.

Cross-References

Taxes and assessments, Title 85, ch. 7, part 21.

85-7-308. Validity of districts organized earlier. Any irrigation district which has been heretofore organized under procedure in substantial compliance with the provisions of this part shall, upon March 10, 1925, become a public corporation, with the privileges and powers hereby conferred, to the same extent as if such irrigation district were organized under the authority of this part.

History: En. Sec. 9, Ch. 100, L. 1925; re-en. Sec. 7264.9, R.C.M. 1935; R.C.M. 1947, 89-2119.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

Part 4
Subdistricts

85-7-401. Authority to create subdistricts — petition — requirements. (1) The board of commissioners of an irrigation district created and organized under Title 85, chapter 7, parts 1 and 15, may establish one or more subdistricts within the irrigation district to provide for and finance the cost of irrigation works, including gravity irrigation systems, gravity measure systems, or sprinkling systems, that would irrigate lands in the subdistrict but not other lands in the district. A subdistrict may be established only upon a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands to be included within the subdistrict. The petition must be addressed to and filed with the board of commissioners and be accompanied by a map or plat of the proposed subdistrict.

(2) The petition must state:

(a) the name suggested for the proposed subdistrict;

(b) a general description of the land to be included in the proposed subdistrict;

(c) the name of each holder of title or evidence of title to the lands in the proposed subdistrict, as determined according to 85-7-101 and 85-7-102 and, if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;

(d) the general water source from which the land in the proposed subdistrict will be irrigated and the general character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in or for the benefit of the proposed subdistrict; and

(e) a request that the land within the proposed subdistrict be made a subdistrict according to the provisions of 85-7-401 through 85-7-404.

History: En. Sec. 1, Ch. 439, L. 1989.

85-7-402. Notice of hearing on petition to create subdistrict. (1) Upon the filing of a petition to create a subdistrict, the board of commissioners of the irrigation district shall by order fix the time and place for a hearing on the petition and shall direct that notice of the hearing be given.

(2) The notice of the hearing must state:

(a) the name of the proposed subdistrict and its purpose;

(b) the time and place of the hearing;

(c) a general description of the land proposed to be included in the subdistrict;

(d) a general description of the water source; and

(e) the general character of the works, water rights, canals, and other property proposed to be acquired or constructed in or for the benefit of the subdistrict.

(3) The board shall publish notice of the hearing at least once a week for 2 successive weeks in a newspaper published in each county in which the

proposed subdistrict is located. The first publication must occur not less than 15 days before the date of the hearing.

(4) Notice of the hearing must also be mailed not less than 15 days before the date of the hearing to each holder of title or evidence of title to land within the proposed subdistrict. However, a defect in the notice or failure to give mailed notice does not affect the validity of the proceeding for the creation of a subdistrict under 85-7-401 through 85-7-404.

History: En. Sec. 2, Ch. 439, L. 1989.

85-7-403. Hearing on petition to create subdistrict. (1) The board of commissioners shall hear the petition at the time specified in the notice provided under 85-7-402. The board may adjourn the hearing for lack of sufficient notice or other good cause. The hearing must be completed within 3 weeks of the initial hearing.

(2) Upon application of the petitioners or any interested person or persons, the board shall allow the petition to be amended and may order that additional notice be given.

(3) At the hearing, any person whose land or property rights may be damaged or benefited by the creation of the subdistrict or by the irrigation works or improvements to be acquired or constructed in or for the benefit of the subdistrict may appear and submit oral or written testimony.

History: En. Sec. 3, Ch. 439, L. 1989.

85-7-404. Review of petition — creation of irrigation subdistrict. (1) After the hearing on the creation of the proposed subdistrict, the board of commissioners shall by resolution create the subdistrict if it finds that:

(a) the petition substantially complies with the provisions of 85-7-401; and

(b) it is in the best interests of the holders of title or evidence of title in the subdistrict and the district to establish the subdistrict.

(2) The board shall describe in the resolution the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district.

(3) In creating the subdistrict proposed by the petition, the board may alter the geographic area of the subdistrict or the scope or type of irrigation improvements to be undertaken in or for the benefit of the subdistrict, subject to the following conditions:

(a) The board may not include within the subdistrict land not identified by the petition as part of the proposed subdistrict unless notice and hearing on the addition are provided according to 85-7-402 and 85-7-403.

(b) The board may not exclude land from the proposed subdistrict if:

(i) the land can be irrigated from the same general source and by the same general system of works proposed for other land in the subdistrict; and

(ii) the owner or owners of the land file a written statement with the board requesting that the land be included in the subdistrict.

(c) The board shall exclude land from the proposed subdistrict if it determines that:

(i) the land will not benefit from irrigation obtained from the works of the proposed subdistrict; or

(ii) the land has appurtenant water rights or can be irrigated from sources more feasible than the proposed subdistrict and the owner or owners of the land have not filed a written statement with the board consenting to inclusion of the land in the subdistrict.

(4) For purposes of including or excluding land from a proposed subdistrict, the board of commissioners may subdivide any tract into 40-acre or smaller parcels.

(5) The creation of a subdistrict by the board of commissioners is conclusive on all owners of land within the subdistrict unless, within 30 days after adoption by the board of the resolution establishing the subdistrict, a holder of title or evidence of title to land within the subdistrict petitions the district court of the county in which the greater portion of the proposed subdistrict is located, for review of the creation of the subdistrict. Upon the timely filing of a petition for review of the creation of the subdistrict, the district court shall conduct a hearing and shall issue a decision in substantially the same manner required for review of a petition for an irrigation district under 85-7-105 through 85-7-108. The district court shall base its decision on whether the requirements of 85-7-401 through 85-7-403 and subsections (1) through (4) of this section have been met.

(6) A proceeding initiated in the district court for review of the validity of the bond issue or issues to finance the irrigation improvements to be undertaken in the subdistrict may be consolidated with a proceeding initiated under this section. Any indebtedness or liability incurred by the board of commissioners of the district with respect to or on behalf of a subdistrict, including bonds issued by the district, may not constitute a charge or lien on any land in the district except the land within the subdistrict.

History: **En. Sec. 4, Ch. 439, L. 1989.**

85-7-405 through 85-7-410 reserved.

85-7-411. *(Temporary)* **Alteration and determination of subdistrict acreage.** (1) Land may be deleted from or added to the subdistrict in the same manner provided for irrigation districts in 85-7-1801 through 85-7-1810 and in 85-7-1846.

(2) Land in a subdistrict that is deleted from an irrigation district remains in the subdistrict unless it is specifically deleted from the subdistrict according to subsection (1).

(3) The taxable area of the land in the subdistrict may be determined in the manner provided in 85-7-1841 through 85-7-1845. *(Terminates December 31, 1998—sec. 5, Ch. 306, L. 1997.)*

85-7-411. *(Effective January 1, 1999)* **Alteration and determination of subdistrict acreage.** (1) Land may be deleted from or added to the subdistrict in the same manner provided for irrigation districts in 85-7-1801 through 85-7-1810.

(2) Land in a subdistrict that is deleted from an irrigation district remains in the subdistrict unless it is specifically deleted from the subdistrict according to subsection (1).

(3) The taxable area of the land in the subdistrict may be determined in the manner provided in 85-7-1841 through 85-7-1845.

History: **En. Sec. 5, Ch. 439, L. 1989; amd. Sec. 2, Ch. 306, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 306 in (1) inserted reference to 85-7-1846. Amendment effective July 1, 1997, and terminates December 31, 1998.

Termination: Section 5, Ch. 306, L. 1997, provided that the 1997 amendments terminate December 31, 1998.

Cross-References

Alteration and determination of district acreage, Title 85, ch. 7, part 18.

85-7-412. Dissolution of subdistrict. A subdistrict created under 85-7-404 may be dissolved by order of the district court of the county in which the greatest portion of lands of the subdistrict are located, in the manner provided for dissolution of irrigation districts in Title 85, chapter 7, part 10.

History: En. Sec. 6, Ch. 439, L. 1989.

Parts 5 through 9 reserved

Part 10

Dissolution of Districts

85-7-1001. Proceedings for dissolution of district. (1) Whenever an irrigation district has been organized under the provisions of parts 1 and 15, then such district may be dissolved by an order of the district court of the county in which the lands or the greater portion of the lands are situate whenever:

(a) no irrigation plant or system for the irrigation of the lands in the district has been constructed or purchased;

(b) no bonded indebtedness has been incurred; and

(c) all expenses for the organization and all other indebtedness of the district have been paid.

(2) In order that the district court may acquire jurisdiction to enter such order dissolving the district, a petition must be filed with the clerk of said district court, signed by an equal number of holders of title or evidence of title as are required to sign the original petition for the creation of the district. The district court must make an order for the hearing of said petition within 30 days from its filing, and the clerk of the court must give due notice of the hearing of such petition by posting three notices in three public places in said district and by publication of a notice of the hearing for 2 successive weeks in a newspaper of general circulation published in the county. Upon the hearing of said petition, any person interested may appear and give evidence for or against the granting of said petition. If, upon said hearing, the court finds that no bonded indebtedness of the district has been created and all of the expenses of organization and all other indebtedness have been paid and that the best interests of the landowners of said district require that the district shall be dissolved, the district court shall make such order dissolving said district and shall cause a certified copy of the order to be recorded in the office of the county clerk and recorder of said county.

History: En. Sec. 3, Ch. 96, L. 1919; re-en. Sec. 7253, R.C.M. 1921; re-en. Sec. 7253, R.C.M. 1935; R.C.M. 1947, 89-2001.

Cross-References

General duties of Clerk of District Court, 3-5-501.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1002. Dissolution of districts having incurred indebtedness. (1) Any irrigation district organized and existing under the laws of the state of Montana may be dissolved by an order of the district court of the county in which the land or the greater portion of the lands of the district are situated.

(2) In case a district has incurred bonded indebtedness and has constructed or purchased any irrigation plant or system for the irrigation of the land in the district, it shall be necessary, in order that the district court may acquire jurisdiction to enter an order dissolving the district, that a petition be filed with the clerk of said district court. This petition shall be signed by an equal number of holders of title or evidence of title as are required to sign the original petition for the creation of the district and must also be signed by a sufficient number of bondholders of the district or by their assignees or duly authorized agents, representing at least 80% of the outstanding bonds of said district.

(3) In case a district has incurred bonded indebtedness but has not constructed or purchased any irrigation plant or system for the irrigation of land in the district and more than 10 years have expired since the date of organization of the district, then in such case, such district may be dissolved by an order of the district court of the county in which the land or the greater part of the lands are situated if the petition praying for dissolution shall be signed by a majority of the board of irrigation district commissioners and also by a sufficient number of bondholders of the district or by their assignees or duly authorized agents, representing at least 80% of the outstanding bonds of said district.

History: En. Sec. 1, Ch. 60, L. 1933; re-en. Sec. 7253.1, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1943; R.C.M. 1947, 89-2002.

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-7-1003. Contents of petition. The petition of 85-7-1002 shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if any, together with the general description of them, showing the amount of each described indebtedness and the ownership, so far as known, of the indebtedness. The petition shall also state the assets of the district, including any irrigation systems, dams, reservoirs, canals, franchises, water rights, and other property; and in case any proposition has been made by the holders of the indebtedness to settle the indebtedness, this proposition, together with any plan proposed to carry the proposition into execution, shall be included in the petition.

History: En. Sec. 2, Ch. 60, L. 1933; re-en. Sec. 7253.2, R.C.M. 1935; amd. Sec. 37, Ch. 460, L. 1977; R.C.M. 1947, 89-2003.

85-7-1004. Use of corporation to carry out dissolution plan. In carrying out such plan and proposition, a corporation may be organized under the general laws for the purpose of acquiring the assets of said district, including the irrigation system, if any, dams, reservoirs, canals, franchises, water rights, and other property, which corporation shall have all the powers, rights, and franchises of corporate bodies organized under general laws and in addition shall have such further power as may be necessary to possess and carry on said irrigation system and exercise such franchise and water rights.

History: **En. Sec. 3, Ch. 60, L. 1933; re-en. Sec. 7253.3, R.C.M. 1935; R.C.M. 1947, 89-2004.**

Cross-References

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

85-7-1005. Hearing on petition, notice, and order. The district court must make an order for the hearing of the petition for the dissolution of the district within 30 days from its filing, and the clerk of the court must give due notice of the hearing of said petition by posting three notices in three public places in said district and by publication of a notice of the hearing for 2 successive weeks in a newspaper of general circulation published in the county and by mailing notice of said hearing to all known bondholders of the district. Upon the hearing of said petition, any person interested may appear and give evidence for or against the granting of said petition.

History: **En. Sec. 4, Ch. 60, L. 1933; re-en. Sec. 7253.4, R.C.M. 1935; R.C.M. 1947, 89-2005.**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1006. Court's authority at hearing. (1) At the hearing by said court it shall determine the regularity, legality, and correctness of all proceedings and in so doing shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties. The rules of pleading and practice in Title 25 not inconsistent with the provisions of this part are made applicable to the proceedings herein provided. The proceedings herein are declared to be for the general interest of the public and state. The hearing upon said petition shall be considered as an equitable action in rem.

(2) If the court shall consider, after hearing, that the plan proposed in the petition is not in the public interest and will not promote public welfare or is unfair to bondholders or property holders or general creditors, it may allow the petitioners to amend their petition and to submit a modified or different plan and hear the amended petition and hear and dispose of objections to the same. The judgment may dissolve the district as a public corporation; transfer water rights appurtenant to lands, whether represented by shares of stock or otherwise; and divest the lien of bonds upon lands in the district.

History: **En. Sec. 5, Ch. 60, L. 1933; re-en. Sec. 7253.5, R.C.M. 1935; R.C.M. 1947, 89-2006.**

85-7-1007. Court decree and sale of assets. (1) The court, in its decree, shall have the power to make the orders necessary to carry out said proposition for the discharge of the indebtedness and distribution of the property of said district and may decree a sale of its assets in such manner as may effectuate said proposition and as the court may judge best, either in one lot or in such parcels as may be provided and may provide for conveyance of said irrigation system, including dams, reservoirs, canals, franchises, water rights, and other property and also of any other assets of the district, including lands sold thereto.

(2) The court, in its investigation and determination of said matter, may take into consideration the fact that payments have been made by certain of the water users in excess of other water users who have defaulted. In its decree the court may require that the purchaser of the assets may give consideration

to various water users for payments theretofore made by them on the irrigation system.

History: **En. Sec. 6, Ch. 60, L. 1933; re-en. Sec. 7253.6, R.C.M. 1935; R.C.M. 1947, 89-2007.**

85-7-1008. Final decree of dissolution — when made. Whenever all the property of such irrigation district shall have been disposed of and all the obligations thereof, if any there be, shall have been discharged, the court shall enter a final decree declaring said district to be dissolved.

History: **En. Sec. 7, Ch. 60, L. 1933; re-en. Sec. 7253.7, R.C.M. 1935; R.C.M. 1947, 89-2008.**

Parts 11 through 13 reserved

Part 14

Irrigation District Revenue Bond Act

Part Cross-References

Public bond issues generally, Title 17, ch. 5.

85-7-1401. Short title. This part may be cited as the "Irrigation District Revenue Bond Act".

History: **En. Sec. 1, Ch. 193, L. 1987.**

85-7-1402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Irrigation district" means a district created pursuant to Title 85, chapter 7, part 1.

(2) "Issuer" means the board of commissioners of an irrigation district or a board of control created pursuant to Title 85, chapter 7, part 16.

(3) "Revenues" means any fees, charges, rates, rents, or lease payments.

(4) "Undertaking" means any one or a combination of the following:

(a) water sources, water rights, irrigation canals, irrigation systems, including pumping facilities or gravity measure systems, reservoirs, reservoir sites, or small power production facilities that are:

(i) certified as such by the federal energy regulatory commission; and

(ii) are associated with federal reclamation projects;

(b) any real or personal property or water rights related to or necessary to provide, operate, and maintain an undertaking listed in subsection (4)(a).

History: **En. Sec. 2, Ch. 193, L. 1987.**

85-7-1403. Interpretation. (1) The powers conferred in this part are in addition to the powers conferred by any other general, special, or local law.

(2) An undertaking may be acquired, constructed, or improved, and bonds may be issued under this part for such purposes, notwithstanding the provisions of Title 85, chapter 7.

(3) If the provisions of this part are inconsistent with the provisions of Title 85, chapter 7, the provisions of this part control.

History: **En. Sec. 3, Ch. 193, L. 1987.**

85-7-1404 through 85-7-1410 reserved.

85-7-1411. Authority to acquire, construct, maintain, operate, and lease various undertakings. (1) An irrigation district may:

(a) construct, acquire by gift, purchase, lease, or improve any undertaking, within or outside the irrigation district, and acquire by gift, purchase, or lease land or rights in land or water rights in connection with the undertaking;

(b) operate and maintain or enter into a contract for the operation and maintenance of any undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside the territorial boundaries of the irrigation district. However, an irrigation district may not furnish or enter into a contract for the furnishing of electrical energy or capacity except to a qualified purchaser under the Public Utility Regulatory Policy Act of 1978.

(c) lease any undertaking to a private or governmental entity.

(2) Nothing in this section may be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning such property.

History: En. Sec. 4, Ch. 193, L. 1987.

85-7-1412. Joint undertakings. Irrigation districts, through their respective boards of commissioners, may enter into contracts to jointly plan, acquire, construct, operate, maintain, and finance any undertaking in accordance with Title 85, chapter 7, part 16. The contract must specify, if an undertaking is financed under this part:

(1) that the contract cannot be terminated prior to the redemption or cancellation of any bonds issued under it; and

(2) the manner of disposing of the undertaking upon termination of the contract.

History: En. Sec. 5, Ch. 193, L. 1987.

85-7-1413. Authority to issue revenue bonds. An irrigation district may:

(1) issue its bonds to finance in whole or in part the acquisition, construction, or improvement of any undertaking; and

(2) pledge to the punctual payment of bonds issued under this part and interest thereon an amount of the revenue of the undertaking (including subsequent improvements or extensions) sufficient to pay the bonds and interest as they become due, and maintain reasonable reserves therefor.

History: En. Sec. 6, Ch. 193, L. 1987.

85-7-1414. Determination of cost. An issuer, in determining costs for purposes of 85-7-1413, may include:

(1) all costs and estimated costs of the issuance of the bonds;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest that it estimates will accrue during the construction period and for 6 months thereafter on money borrowed or that it estimates will be borrowed.

History: En. Sec. 7, Ch. 193, L. 1987.

85-7-1415. Nature of revenue bonds. (1) No holder of any bonds issued under this part may compel the levy of any tax or assessment on property within the irrigation district to pay the bonds or interest thereon.

(2) Each bond issued under this part must recite in substance that:

(a) the bond, including interest thereon, is payable from the revenue pledged to the payment thereof or any other security pledged therefor, including a lien on the undertaking; and

(b) the bond does not constitute a debt of the irrigation district within the meaning of any constitutional or statutory limitation or provision.

History: En. Sec. 8, Ch. 193, L. 1987.

85-7-1416. Undertakings to be self-supporting. (1) An issuer issuing bonds pursuant to this part shall collect reasonable fees for the services, facilities, and commodities of the undertaking and shall revise the fees from time to time so that the undertaking remains self-supporting.

(2) The fees prescribed must produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for which the revenue is pledged, including reserves; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

History: En. Sec. 9, Ch. 193, L. 1987.

85-7-1417. Use of revenue from undertaking. (1) An issuer of bonds pursuant to this part for the acquisition, construction, or improvement of any undertaking may apply the revenue of the undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for which the revenue is pledged, including reserves;

(b) to provide for all expenses of operation and maintenance of the undertaking, including reserves;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part for which the revenue of the undertaking is pledged;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon that do not constitute a lien or encumbrance on the revenue of the undertaking and which were issued for the purpose of financing the acquisition, construction, or improvement of the undertaking; and

(e) to provide a reserve for improvements to the undertaking.

(2) Unless adequate provision has been made for the purposes listed in subsection (1), no irrigation district may transfer the revenue of the undertaking to its general fund.

History: En. Sec. 10, Ch. 193, L. 1987.

85-7-1418. Authorization for undertaking and issuance of bonds. (1) The acquisition, construction, or improvement of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution of the governing body of the issuer without an election.

History: En. Sec. 11, Ch. 193, L. 1987.

85-7-1419. Covenants in resolution authorizing issuance of bonds. A resolution authorizing the issuance of bonds under this part may contain covenants relating to:

(1) the purposes for which the proceeds of sale of the bonds may be applied and the use and disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;

(3) the issuance of other or additional bonds payable from the revenue of the undertaking;

(4) the operation and maintenance of the undertaking;

(5) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(6) books of account and the inspection and audit of the books; and

(7) the terms and conditions upon which the holders of the bonds or any portion of them or any trustee is entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings and which receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe fees, subject to the approval of the public service commission if such approval is required; and

(d) collect, receive, and apply all revenues in the same manner as the issuer itself might do.

History: En. Sec. 12, Ch. 193, L. 1987.

85-7-1420 through 85-7-1430 reserved.

85-7-1431. Remedies. The provisions of the resolution authorizing the bonds are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate proceeding.

History: En. Sec. 13, Ch. 193, L. 1987.

85-7-1432. Presumptions of validity of bonds. (1) Bonds bearing the signatures of officers in office on the date of the signing of the bonds are valid obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any of the persons whose signatures appear on the bonds have ceased to be officers.

(2) The validity of the bonds is not dependent on the validity or regularity of any proceedings relating to the acquisition, construction, or improvement of the undertaking for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to this part, which recital is conclusive evidence of their validity and of the regularity of the issuance.

History: En. Sec. 14, Ch. 193, L. 1987.

85-7-1433. Liens arising from bonds. The resolution authorizing the bonds must specify and define the revenues or portion of the undertaking's revenues that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 15, Ch. 193, L. 1987.

85-7-1434. Security interest in undertaking. The issuer may, pursuant to a mortgage, trust indenture, or security agreement, grant a security interest in the real and personal property constituting the undertaking itself.

History: En. Sec. 16, Ch. 193, L. 1987.

85-7-1435. Details relating to revenue bonds. Bonds authorized to be issued under this part shall bear interest at a rate not exceeding the limitation of 17-5-102, payable semiannually, and may be in one or more series; bear such date or dates; mature at such time or times, not exceeding 40 years from their respective dates of issuance; be payable in such place or places; carry such registration privileges; be subject to such terms of redemption; be executed in such manner; contain such terms, covenants, and conditions; and be in such form, either coupon or registered, as the resolution or subsequent resolutions may provide.

History: En. Sec. 17, Ch. 193, L. 1987.

85-7-1436. Sale of bonds. (1) Bonds authorized to be issued may be sold at a price less than face value if the issuer determines that the sale is in the best interests of the irrigation district.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or an agency, instrumentality, or corporation thereof.

(b) If not sold to the United States or the state of Montana or an agency, instrumentality, or corporation thereof, the bonds must be sold at public sale after notice as provided in 85-7-1437.

History: En. Sec. 18, Ch. 193, L. 1987.

85-7-1437. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by 85-7-1436 must be published once at least 5 days prior to such sale:

(a) in a newspaper of general circulation in the county in which the office of the issuer is located; and

(b) in a financial newspaper in New York, Chicago, or San Francisco.

(2) If the bond issue is in an amount of less than $150,000, the bond issue must be advertised at least 5 days prior to sale in a newspaper of general circulation throughout the state of Montana.

History: En. Sec. 19, Ch. 193, L. 1987.

85-7-1438. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions determined by the governing body, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. The bonds and interim receipts or certificates are fully negotiable, as provided by Title 30, chapter 8.

History: En. Sec. 20, Ch. 193, L. 1987.

Part 15

Organization of Districts

Part Cross-References

Administration of conservation districts, Title 76, ch. 15, part 3.

Conservancy districts — organization and procedure, Title 85, ch. 9, part 4.

85-7-1501. Qualifications of commissioners and term of office. (1) A person may not be a commissioner unless he is an owner of irrigable land within the division of the district he is to represent and is a resident of the county in which the division of the district or some portion of the division is situated.

(2) The commissioners appointed shall hold their respective offices until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner must be approved by the district court or judge of the district court and filed in the office of the clerk of the court.

History: **En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R.C.M. 1921; re-en. Sec. 7170, R.C.M. 1935; amd. Sec. 16, Ch. 460, L. 1977; R.C.M. 1947, 89-1205(part); amd. Sec. 398, Ch. 571, L. 1979; amd. Sec. 1, Ch. 584, L. 1989.**

Cross-References

Residence — rules for determining, 1-1-215.

General duties of Clerk of District Court, 3-5-501.

Justices of the Peace, Title 3, ch. 10, part 2.

Division of irrigation project into districts, 85-6-105.

85-7-1502. Organization of board of commissioners and establishment of office. (1) The commissioners shall meet within 10 days after their appointment and shall organize as a board by the election of one of their number as president. They shall also elect a secretary (who may or may not be a commissioner). Except as provided in part 16 of this chapter, the compensation of the secretary and all other employees authorized under this chapter shall be fixed by the board.

(2) The board shall also at this meeting designate the place where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing a substantial portion of the lands in the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published or of general circulation in the county wherein the office of the district is located and by posting in at least three public places in each division of the district.

History: **En. Sec. 6, Ch. 146, L. 1909; re-en. Sec. 7171, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1923; re-en. Sec. 7171, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1961; R.C.M. 1947, 89-1206.**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1503. Board meetings. (1) All meetings of the board of commissioners shall be public and a complete record of all proceedings shall be kept by the secretary.

(2) Regular meetings of the board shall be held at such times as the board may by rule or bylaw prescribe. Special meetings may be called on 24 hours' notice by the president or any two members of the board or in such other manner and upon such other notice as the board may by rule or bylaw prescribe. All meetings of the board may be adjourned as the board shall order or direct. A majority of the commissioners shall constitute a quorum.

History: **En. Sec. 7, Ch. 146, L. 1909; re-en. Sec. 7172, R.C.M. 1921; re-en. Sec. 7172, R.C.M. 1935; R.C.M. 1947, 89-1207.**

Cross-References

Open meetings, Title 2, ch. 3, part 2.

85-7-1504. Bonds for commissioner and secretary. (1) In all cases where the obligations of the district, either existing or proposed, total $250,000 or over, the commissioners of an irrigation district shall each furnish a bond in the penal sum of $2,500, with corporate surety conditioned for the faithful performance of their duties under this chapter. The secretary shall furnish bond, with corporate surety, in the sum of $1,000, conditioned for the faithful performance of his duties pursuant to this chapter and for the proper safekeeping of the records and documents of the district. In all other cases the bond for the commissioners shall be in the sum of $1,000.

(2) In case any district established under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of moneys for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or by any person injured by the failure of the commissioner or the district to fully, promptly, and completely perform their respective duties.

History: **(1)En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; Sec. 89-1208, R.C.M. 1947; (2)En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R.C.M. 1921; re-en. Sec. 7170, R.C.M. 1935; amd. Sec. 16, Ch. 460, L. 1977; Sec. 89-1205, R.C.M. 1947; R.C.M. 1947, 89-1205(part), 89-1208(3).**

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Suretyship, Title 28, ch. 11, part 4.

85-7-1505. Compensation and expenses of commissioners. The commissioners, when sitting as a board or when engaged in the business of the district, are entitled to compensation of $25 for each day they are actually and necessarily engaged in the performance of irrigation district duties and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503, and for their necessary expenses when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office.

History: **En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; R.C.M. 1947, 89-1208(1); amd. Sec. 3, Ch. 112, L. 1981; amd. Sec. 5, Ch. 672, L. 1983.**

Cross-References

Public employees — travel, meals, and lodging, Title 2, ch. 18, part 5.

Proceedings subsequent to presenting petition, 85-7-1833.

85-7-1506. Liability of officers. For any willful violation of any express duty hereunder on the part of any officer herein named, he shall be liable upon his official bond and be subject to removal from office by proceedings brought by any tax or assessment payer of the district in the district court of the county wherein the office of the board of commissioners of the district is located.

History: En. Sec. 61, Ch. 146, L. 1909; re-en. Sec. 7256, R.C.M. 1921; re-en. Sec. 7256, R.C.M. 1935; R.C.M. 1947, 89-2103.

Cross-References

Code of ethics for public employees, Title 2, ch. 2, part 1.

Extent of sureties' liability, 2-9-511.

Montana Recall Act, Title 2, ch. 16, part 6.

85-7-1507. Conflict of interest — criminal penalty. No commissioner or any other officer named in this chapter may in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits derived therefrom. For any violation of this provision, such officer is guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished as provided in 45-7-401.

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; R.C.M. 1947, 89-1208(2); amd. Sec. 2, Ch. 326, L. 1979.

Cross-References

Proscribed acts related to contracts — public employees, Title 2, ch. 2, part 2.

Misdemeanor — when no penalty specified, 46-18-212.

Proceedings subsequent to presenting petition, 85-7-1833.

85-7-1508. Compensation and duties of secretary. The member of the board acting as secretary or any person appointed by the board as secretary for the district shall receive such compensation for his services as may be allowed by the board. It shall be the duty of the secretary to keep the books and records of accounts, contracts, securities, and other records; to perform his duties promptly each month; and to make a monthly reconcilement of his accounts with the county treasurer. It shall be the duty of the county treasurer to make a monthly report to the secretary of all receipts, disbursements, and balances. A failure by the secretary to comply with the provisions of this section shall cause a forfeiture of his salary, and he shall be removed from office by the board.

History: En. Sec. 2, Ch. 212, L. 1921; re-en. Sec. 7261, R.C.M. 1921; re-en. Sec. 7261, R.C.M. 1935; R.C.M. 1947, 89-2108.

Cross-References

Duties of County Treasurer, 7-6-2111.

Conservation districts — receipt and crediting of funds — County Treasurer, 76-15-524.

Part 16
Joint Operations

85-7-1601. Authority for joint operation of districts. Whenever the board of commissioners of one or more irrigation districts, established and organized by virtue of the provisions of 85-7-101 through 85-7-103 shall, in their discretion, deem it advisable for the best interests of their district to operate, manage, supervise, and maintain the operation of their district jointly with another irrigation district, the said commissioners are hereby authorized and empowered to enter into written contracts for the creation of a joint board of control. Where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the creation of a joint board of control.

History: **En. Sec. 1, Ch. 179, L. 1959; R.C.M. 1947, 89-1209.**

Cross-References

What contracts must be in writing, 28-2-903.

Negotiations with other states by Department, 85-1-223.

85-7-1602. Election on joint operations. At any time after March 7, 1959, in the event that it is deemed advisable or desirable for any irrigation districts to operate under the direction of a board of control as herein provided, the boards of commissioners of the districts, after petition requesting the same be received and filed with them, must call an election to put the question before the landowners of the districts which are petitioned to be joined. In the event a majority of the landowners of each district, as provided by 85-7-1710, vote for organizing such board of control, then the commissioners of each district will be authorized and directed to enter into such contract to operate the districts in accordance with the terms of this part as provided by 85-7-1601. The election herein provided shall be conducted in the same manner and the same persons shall be entitled to vote thereat as provided for elections of commissioners of irrigation districts, in accordance with 85-7-1702, 85-7-1710, and 85-7-1712.

History: **En. Sec. 10, Ch. 179, L. 1959; R.C.M. 1947, 89-1218(part); amd. Sec. 399, Ch. 571, L. 1979.**

Cross-References

What contracts must be in writing, 28-2-903.

85-7-1603. Withdrawal from joint operation. Any district having entered into a written contract, as provided by this part, may withdraw from such contract upon submitting to the board of control, in writing, a 90-day notice of withdrawal, except that if revenue bonds have been issued by the board of control under part 14 of this chapter, the district may not withdraw from such contract until such bonds are canceled or redeemed.

History: **En. Sec. 11, Ch. 179, L. 1959; R.C.M. 1947, 89-1219; amd. Sec. 21, Ch. 193, L. 1987.**

Cross-References

Written contracts, Title 28, ch. 2, part 9.

85-7-1604. Validity of joint operations under earlier agreements. Any contract previously entered into between any two or more irrigation districts or between any such irrigation districts and the United States bureau of reclamation which meets the requirements of this part and which creates a board of control meeting all the requirements of this part is hereby declared to be a valid contract and to create a valid board of control under this part.

History: **En. Sec. 10, Ch. 179, L. 1959; R.C.M. 1947, 89-1218(part).**

Cross-References

Essential characteristics of object — contracts, 28-2-602.

85-7-1605. Purpose. This part is not intended to conflict in any way with statutes governing irrigation districts but is for the sole purpose of making it possible for one or more irrigation districts to function jointly through a central control agency for the purpose of efficiency, simplicity, and economy.

History: **En. Sec. 12, Ch. 179, L. 1959; amd. Sec. 18, Ch. 460, L. 1977; R.C.M. 1947, 89-1220.**

85-7-1606 through 85-7-1610 reserved.

85-7-1611. Board of control — composition and vacancies. (1) The board of control shall be composed of one or more irrigation commissioners from each district involved, who shall be appointed by the board of commissioners of the district which he or they represent for a term of 1 year, and one member at large. The member at large shall be a landowner from one of the districts involved and shall be appointed by the commissioner members to serve for a period of 1 year and shall be required to give bond, the same as an irrigation district commissioner. The member at large shall not be an employee, agent, water commissioner, or servant of any of the districts involved. At no time shall the board membership be less than three members. Each member of the board of control and the manager, if hired, before entering upon his duties shall give a bond to the board of control in the amount of $5,000, conditioned upon the faithful performance of his duties.

(2) Vacancies occurring during the term in the position of commissioner member shall be filled for the remainder of the unexpired term by appointment of the board of commissioners of the district involved. Vacancies occurring in the position of member at large shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

History: **En. Sec. 2, Ch. 179, L. 1959; R.C.M. 1947, 89-1210.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

85-7-1612. Board of control — powers and duties. (1) The board of control established by this part is the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

(2) The board shall make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required; and prescribe their duties.

(3) The board may institute and maintain any and all actions and proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this part or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by its attorneys and in the name of such board of control.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. The board shall pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the contracting districts and for the protection and preservation of the works and other property of the districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

(5) The board of control may perform all other acts necessary or appropriate to fully carry out the purposes of this part.

(6) The board of control may plan, acquire, construct, operate, maintain, lease, or finance an undertaking through the issuance of revenue bonds, as provided in part 14 of this chapter.

History: En. Sec. 3, Ch. 179, L. 1959; R.C.M. 1947, 89-1211; amd. Sec. 3, Ch. 326, L. 1979; amd. Sec. 22, Ch. 193, L. 1987; amd. Sec. 79, Ch. 83, L. 1989.

Cross-References

Definition of person, Rule 4A, M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

Drainage districts, Title 85, ch. 8.

85-7-1613. Board of control — per diem and expenses. The members of the board of control, when sitting as a board or when engaged in the business of the board, are entitled to compensation of $25 for each day they are actually and necessarily engaged in the performance of irrigation district duties and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503, and for their necessary expenses.

History: En. Sec. 4, Ch. 179, L. 1959; R.C.M. 1947, 89-1212; amd. Sec. 4, Ch. 112, L. 1981; amd. Sec. 6, Ch. 672, L. 1983.

Cross-References

Public employees — travel, meals, and lodging, Title 2, ch. 18, part 5.

85-7-1614. Board of control — office and records. The board of control is hereby authorized and empowered to establish an office in one of the contracting districts; to hold its proceedings therein; and to keep on file all necessary petitions, papers, minutes, documents, or other instruments belonging to the board of control and the contracting districts.

History: En. Sec. 5, Ch. 179, L. 1959; R.C.M. 1947, 89-1213.

85-7-1615. Manager of operations. The board of control shall have the power to hire a manager to supervise and conduct the operations of the district or districts over which it presides or to hire a manager for each district under its supervision, whichever it deems advisable in the premises. The manager or managers shall perform all duties as set out for him or them by the board of control.

History: En. Sec. 6, Ch. 179, L. 1959; R.C.M. 1947, 89-1214.

85-7-1616. Required records and audits. (1) The board of control shall keep or cause to be kept, in the form prescribed by the department of commerce, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) The department of commerce shall prescribe forms for the use of the board of control.

(3) The accounting records of all boards of control must be audited in accordance with 2-7-503.

History: En. Sec. 7, Ch. 179, L. 1959; amd. Sec. 165, Ch. 253, L. 1974; amd. Sec. 51, Ch. 213, L. 1975; R.C.M. 1947, 89-1215; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 11, Ch. 179, L. 1995.

Cross-References

Department of Commerce — reports and audits, Title 2, ch. 7.

85-7-1617. Apportionment of costs of joint operation. The districts entering into a contract for their joint control shall pay to the board of control, proportionately on an acreage basis the necessary costs, expenses, and charges for the general administration, maintenance, and repairs.

History: En. Sec. 8, Ch. 179, L. 1959; R.C.M. 1947, 89-1216.

Cross-References

Financial aspects of conservation districts, Title 76, ch. 15, part 5.

Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.

Conservancy districts — finance, Title 85, ch. 9, part 6.

85-7-1618. Custody and disbursement of funds. The county treasurer of the county wherein the office of the board is established shall be the custodian of all funds made available for the use of the board, and he shall pay out such funds upon the order of the board. Such orders shall be signed by the secretary or treasurer of the board of control and countersigned by the president or, in his absence, by the vice-president of the board of control. The board funds shall be kept separate and distinct from all other county funds. The county treasurer to whom board funds are entrusted shall be liable on his bond for the safekeeping of said funds.

History: En. Sec. 9, Ch. 179, L. 1959; R.C.M. 1947, 89-1217.

Cross-References

Duties of County Treasurer, 7-6-2111.

Part 17
Elections

Part Cross-References

Elections, Title 13.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

Conservation districts — general election, 76-15-303.

Conservation districts — election of supervisors, 76-15-304.

Drainage districts — election of Commissioners, 85-8-302.

Conservancy districts — ordering of election by court, 85-9-206.

85-7-1701. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 10, Ch. 146, L. 1909; re-en. Sec. 7175, R.C.M. 1921; re-en. Sec. 7175, R.C.M. 1935; R.C.M. 1947, 89-1302.

85-7-1702. Regular election — term of office. (1) The regular election for commissioners in each district must be held annually in accordance with 13-1-104 and 13-1-401.

(2) Candidates for the office of commissioner may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district. If no nominations are made, the following procedures must be followed:

(a) For elections held in accordance with 13-1-401(1), the electors of the district shall write on the ballots the name of the person or persons for whom they desire to vote.

(b) For elections held in accordance with 13-1-401(2), the electors of the district may either accept nominations from the floor or write on the ballots the name of the person or persons for whom they desire to vote.

(3) If there is only one nominee for a ballot position, the nominee may be declared elected by acclamation or in accordance with 13-1-304.

(4) Within 40 days following their election, the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office at the pleasure of the board. The term of office of each commissioner begins on the date of the organizational meeting after the regular election and continues for 3 years and until the election and qualification of his successor.

(5) Commissioners are elected by the electors of the entire district.

History: En. Sec. 11, Ch. 146, L. 1909; amd. Sec. 4, Ch. 153, L. 1917; amd. Sec. 1, Ch. 3, L. 1921; amd. Sec. 1, Ch. 7, Ex. L. 1921; re-en. Sec. 7176, R.C.M. 1921; re-en. Sec. 7176, R.C.M. 1935; amd. Sec. 1, Ch. 302, L. 1977; R.C.M. 1947, 89-1303(part); amd. Sec. 370, Ch. 571, L. 1979; amd. Sec. 9, Ch. 27, L. 1981; amd. Sec. 40, Ch. 250, L. 1985; amd. Sec. 1, Ch. 269, L. 1991.

Cross-References

Conservation districts — election of supervisors, 76-15-304.

Election on joint operations, 85-7-1602.

Drainage districts — election of Commissioners, 85-8-302.

85-7-1703. Vacancies among commissioners. In case of a vacancy in the board of commissioners, from any cause, the vacancy must be filled until the next regular or special election by appointment by the board. The remaining commissioners shall constitute a quorum for the purpose of filling any vacancy. If a vacancy exists for every position on the board, the judge of the district court of the county in which the division or major portion of the division is situated shall make the appointments. The appointee must be an owner of irrigable land within the division of the district he represents and must be a resident of the county in which the division of the district or some portion of the division is situated. A commissioner appointed under this section shall hold office until his successor is elected and qualified.

History: En. Sec. 12, Ch. 146, L. 1909; re-en. Sec. 7177, R.C.M. 1921; amd. Sec. 5, Ch. 157, L. 1923; re-en. Sec. 7177, R.C.M. 1935; R.C.M. 1947, 89-1304; amd. Sec. 5, Ch. 112, L. 1981; amd. Sec. 2, Ch. 584, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

District Courts, Title 3, ch. 5.

Drainage districts — vacancies, 85-8-307.

Conservancy districts — vacancies, 85-9-401.

85-7-1704 through 85-7-1709. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

85-7-1704 and 85-7-1705. En. Secs. 13, 14, Ch. 146, L. 1909; re-en. Secs. 7178, 7179, R.C.M. 1921; re-en. Secs. 7178, 7179, R.C.M. 1935; R.C.M. 1947, 89-1305, 89-1306.

85-7-1706. En. Sec. 15, Ch. 146, L. 1909; re-en. Sec. 7180, R.C.M. 1921; re-en. Sec. 7180, R.C.M. 1935; amd. Sec. 1, Ch. 164, L. 1947; R.C.M. 1947, 89-1307.

85-7-1707 through 85-7-1709. En. Secs. 16 thru 18, Ch. 146, L. 1909; re-en. Secs. 7181 thru 7183, R.C.M. 1921; re-en. Secs. 7181 thru 7183, R.C.M. 1947, 89-1308 thru 89-1310.

85-7-1710. Qualification of electors and nature of voting rights. (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, designated "electors", are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general election laws of the state, except that registration of electors and county residency may not be required;

(b) guardians, executors, administrators, and trustees;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction of 40 acres owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as otherwise provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district must be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner may designate an agent to cast the vote. One vote only for each 40 acres of irrigable land or major fraction of 40 acres may be cast by the voting co-owner or by an agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation, of a single owner or co-owners, of the co-owner designated for the purpose of voting, or of the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of the agent's authority, executed and acknowledged by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, as the case may be, and upon filing, the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part. Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district or whenever the majority of the district board adopts a resolution allowing it, each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre of irrigable land owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote.

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of acres owned and the number of votes being cast.

History: En. Sec. 19, Ch. 146, L. 1909; re-en. Sec. 7184, R.C.M. 1921; amd. Sec. 6, Ch. 157, L. 1923; re-en. Sec. 7184, R.C.M. 1935; amd. Sec. 1, Ch. 164, L. 1953; amd. Sec. 19, Ch. 460, L. 1977; R.C.M. 1947, 89-1311; amd. Sec. 371, Ch. 571, L. 1979; amd. Sec. 10, Ch. 27, L. 1981; amd. Sec. 1, Ch. 261, L. 1983; amd. Sec. 3, Ch. 584, L. 1989; amd. Sec. 1, Ch. 191, L. 1993.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

School elections — qualifications of elector, 20-20-301.

Agency, Title 28, ch. 10.

Property — ownership by several persons — types, 70-1-306.
Joint interest defined, 70-1-307.
Powers and duties of guardian of minor, 72-5-231.
Powers and duties of guardian of incapacitated person, 72-5-321.
Powers of conservator in administration, 72-5-427.
Public Administrator — powers and duties in administration, Title 72, ch. 15, part 2.
Powers of trustees, Title 72, ch. 34, part 3.

85-7-1711. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 20, Ch. 146, L. 1909; re-en. Sec. 7185, R.C.M. 1921; re-en. Sec. 7185, R.C.M. 1935; R.C.M. 1947, 89-1312.

85-7-1712. Special elections. The board of commissioners may at any time call a special election and submit to the qualified electors of the district any question which under the provisions of this chapter is required or which, in the judgment of the board, is proper to be submitted to popular vote. Such election shall be called, noticed, and conducted and the result thereof determined and declared in the manner provided in Title 13.

History: En. Sec. 21, Ch. 146, L. 1909; re-en. Sec. 7186, R.C.M. 1921; re-en. Sec. 7186, R.C.M. 1935; R.C.M. 1947, 89-1313; amd. Sec. 372, Ch. 571, L. 1979.

Cross-References
Election on joint operations, 85-7-1602.

85-7-1713. Where documents to be filed and proceedings to be held. Where the lands of a district lie within more than one county, all petitions, papers, documents, or other instruments shall be filed and proceedings had in the county in which the office of the board is established.

History: En. Sec. 22, Ch. 146, L. 1909; re-en. Sec. 7187, R.C.M. 1921; re-en. Sec. 7187, R.C.M. 1935; R.C.M. 1947, 89-1314; amd. Sec. 6, Ch. 112, L. 1981.

Part 18

Alteration and Determination of District Acreage

Part Cross-References
Alteration and termination of conservation districts, Title 76, ch. 15, part 8.
Drainage districts — alteration of districts, Title 85, ch. 8, part 4.
Conservancy districts — alteration of districts, Title 85, ch. 9, part 5.

85-7-1801. Change in boundaries. The boundaries of any irrigation district organized hereunder may be changed in the manner herein prescribed. Such change of the boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References
Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

85-7-1802. *(Temporary)* **Elimination of land from district.** (1) Whenever land has been included within the boundaries of an established and organized irrigation district, which from its location or conformation cannot be successfully irrigated by the irrigation works or system already constructed or proposed to be constructed or the cost of irrigating the land will become burdensome upon the landowners of the district, a majority of the holders of title or evidence of title to the land included in the district (such holders of title or evidence of title also representing a majority in acreage of that land) may in conformance with 85-7-1803 through 85-7-1807 petition the district court of the county in which the land of the district or the greater portion of that land is situated for an order or decree changing the boundaries of the district by eliminating that land from the district.

(2) Whenever a tract of record is located within an irrigation district that is partially within or adjacent to a first-class city that had a population greater than 40,000 and less than 55,000 as shown by the 1990 census, is 3 acres or smaller in size, is located within 5 miles of the exterior boundary of an incorporated city, and is not served by any district canal, system, facility, or other undertaking, the owner of the tract may petition to eliminate the tract from a district pursuant to 85-7-1846. *(Terminates December 31, 1998—sec. 5, Ch. 306, L. 1997.)*

85-7-1802. *(Effective January 1, 1999)* **Elimination of lands from district.** Whenever lands have been included within the boundaries of an established and organized irrigation district, which from their location or conformation cannot be successfully irrigated by the irrigation works or system already constructed or proposed to be constructed or the cost of irrigating the same will become burdensome upon the landowners of the district, a majority in number of the holders of title or evidence of title to the land included in such district (such holders of title or evidence of title also representing a majority in acreage of said lands) may petition the district court of the county in which the lands of the district or the greater portion thereof are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part); amd. Sec. 3, Ch. 306, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 306 in (1) inserted "in conformance with 85-7-1803 through 85-7-1807"; inserted (2) allowing the owner of a tract of land 3 acres or smaller in size to petition for elimination of the tract from a district if the tract is in a district partially within or adjacent to a first-class city with a population of between 40,000 and 55,000 under the 1990 census and is within 5 miles of the exterior boundary of an incorporated city and is not served by any district, canal, system, facility, or other undertaking; and made minor changes in style. Amendment effective July 1, 1997, and terminates December 31, 1998.

Termination: Section 5, Ch. 306, L. 1997, provided that the 1997 amendments terminate December 31, 1998.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1803. Requirements for petition to eliminate lands. (1) The petition for this purpose must be signed by the required number of holders of title or evidence of title to lands within such district, as hereinbefore specified, and the same shall be filed with the clerk of the district court as herein designated.

(2) Such petition shall set forth:

(a) the name of the district;

(b) a general description of the lands to be eliminated or excluded from the district;

(c) the names of the holders of title or evidence of title to the lands sought to be excluded; the names of the holders of title or evidence of title to the remainder of the lands of said district, ascertained in the manner mentioned in 85-7-101 and 85-7-102; and if any holder of title is a nonresident of the county or counties in which the district lies, the post-office address of such nonresident owners, if known;

(d) a brief description of the character of the works, water rights, canals, and other property acquired or proposed to be acquired or constructed for irrigation purposes in the district;

(e) a brief statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(f) a prayer for the exclusion of the lands sought to be eliminated therefrom.

(3) The petition shall be accompanied by a map or plat of the district, showing thereon the lands sought to be eliminated therefrom, and a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and the hearing thereof in the event that said petition is denied.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

General duties of Clerk of District Court, 3-5-501.

Guaranty — general provisions, Title 28, ch. 11, part 1.

85-7-1804. Minor errors. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of jurisdiction of the subject matter.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1805. Notice requirements. On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for 2 successive calendar weeks, in some newspaper published in the county where the petition is filed, a notice stating the time and place fixed by the district court when and where the hearing on said petition will be had and containing a brief statement of the matters set forth in said petition and the object thereof. If any portion of the lands sought to be excluded from the district lie within any other county or counties, then said notice shall be published as provided above in a newspaper published in each such other county. The first publication of said notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing. If any holder of title or evidence of title to lands sought to be excluded from the district is a nonresident of the county or counties in which the district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said notice to each such nonresident whose post-office address is stated in said petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said notice affixed to a copy thereof shall be sufficient evidence of such facts.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Publication of legal notices, Title 18, ch. 7, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service and filing of pleadings and other papers, Rule 5, M.R.Civ.P. (see Title 25, ch. 20).

85-7-1806. Court hearing on petition to eliminate lands. (1) At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn such meeting from time to time, not exceeding 2 weeks in all, and may continue the hearing for the want of sufficient notice or other good cause. The court upon application of the petitioners shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the necessity or justice of the court's making an order granting such petition in whole or in part, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) It shall be the duty of the court to hear and determine whether the requirements as herein set forth have been complied with, and for that purpose shall hear all competent and relevant testimony that may be offered.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Relevancy and its limits, Art. IV, M.R.Ev. (see Title 26, ch. 10).

85-7-1807. Court findings and order on petition to eliminate lands. The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as may be deemed advisable or as fact, right, and justice may require. Such order shall be conclusive upon all of the owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days of the entry of said order. For the purposes of any such appeal, such order shall be regarded as a final judgment of said district court. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

District Court jurisdiction, Title 3, ch. 5, part 3.

General duties of Clerk of District Court, 3-5-501.

Appeals from judgment and orders of District Courts, Art. II, M.R.App.P. (see Title 25, ch. 21).

85-7-1808. Extension of boundaries and addition of lands. The boundaries of any irrigation district may be extended at any time to include lands susceptible of irrigation by the works of the district or through exchange or substitution of water, as hereinafter provided, excluding and excepting therefrom all lands already under irrigation, lands having water rights appurtenant thereto, or lands that can be irrigated from sources more feasible than the district system, unless the owner of such lands shall consent in writing to have such lands included in said district; provided, however, that a petition be presented to the district court of the judicial district in which the irrigation district was organized, asking for such extension, upon terms to be fixed by the court, signed by the holders of title or evidence of title (evidenced as provided in 85-7-101 and 85-7-102) of the lands proposed to be included in the district, representing not less than two-thirds in acreage of said lands.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(1).

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Lands under irrigation — inclusion in district, 85-7-1934.

Added lands to pay proportional share of bonded indebtedness, 85-7-2102.

Confirmation of Board actions by District Court, 85-7-2112.

85-7-1809. Notice of hearing for addition of lands. When such petition is presented, the district court or judge thereof shall appoint a day for a public hearing. Notice of the hearing shall be given by the clerk of the court by publication at least once a week for at least 2 weeks in a newspaper published or of general circulation in the county in which the office of the district is situated. If any of said lands sought to be included in the district lie in a county or counties other than that in which the office of the district is situated, such notice shall also be likewise published in some newspaper published or of general circulation in each such other county or counties. If there be no such newspaper, then such notice shall be posted in at least three public places in the territory sought to be included.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(2).

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1810. Hearing and order on petition for addition of lands. At such public hearing, the district court shall hear those who may desire changes made in the proposed extension, all those whose lands are included or sought to be included in the district, and all other persons whose rights may be affected by the proposed extension. Such public hearing may be adjourned from day to day, not exceeding 20 days in all, and the court shall make an order either granting or denying said petition. If said petition is granted, said order shall describe the lands included in said extension and the terms on which said land shall be included, and a copy of said order shall be filed with the county clerk and recorder in the county wherein said lands are situated. The order of the district court shall be final and conclusive, the same as the order originally creating the district, unless appealed from to the supreme court within 10 days from the entry of the order. The extension of such boundaries shall not deprive the lands already in said district of an adequate supply of water for irrigation purposes.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(3).

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

District Court jurisdiction, Title 3, ch. 5, part 3.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Appeals from judgment and orders of District Courts, Art. II, M.R.App.P. (see Title 25, ch. 21).

85-7-1811. Procedure to correct errors and omissions in orders or decrees. (1) The district court shall retain jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries or to exclude land therefrom for the purpose of correcting any omissions, defects, or errors in the proceedings of said court. The court shall have power to correct and, if necessary, to amend the order of the district court establishing the district, any order extending the boundaries thereof, or any order excluding lands therefrom, including the description of lands included or intended to be included in the district or excluded therefrom or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter which shall be before the court on the application to create the district, to enlarge or extend its boundaries, or to exclude lands therefrom. The court shall have and is hereby granted power and authority on application of the board of commissioners of the district to correct and amend the terms of any order or judgment of said court so that the same shall conform to the provisions of the statute under the authority of which such order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute, and file with the clerk of the district court a petition which shall set forth the following matters:

(a) the name of the district and a reference to the order in which the defect, error or omission, errors in description of lands included or excluded, or departure from the statute occurred;

(b) a statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variance from the statutory requirements;

(c) a prayer for an order correcting said defects, errors, omissions, or irregularities.

(2) If the error, defect, omission, irregularity, or variance is in the description of any land or lands embraced in the district, the petition shall set forth the correct description of said lands, the names of the holders of title or evidence of title thereto, ascertained in the manner provided in 85-7-101 and 85-7-102, and if any holder is a nonresident of the county or counties in which the district lies, the post-office address of such nonresident owner, if known. Upon the filing of said petition, the court shall direct notice of the hearing

thereof to be given in such manner as shall be deemed necessary to protect the rights and interests of the parties and, after a hearing of any parties intervening, shall enter an order correcting the defects, errors, omissions, or irregularities. If the defects, errors, omissions, or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of said court to publish, at least once a week for 2 successive calendar weeks, in some newspaper published in said county where said petition is filed, a copy of said petition, together with a notice stating the time and place fixed by said district court when and where a hearing on said petition will be had, and, if any portion of the lands within said district lies within any other county or counties, said petition and notice shall be published as provided above in a newspaper published in each such other county. If there be no newspaper published in such county, such petition and notice may be published in an adjoining county. The first publication of said petition and notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing. If any holder of title or evidence of title to lands within the district is a nonresident of the county or counties in which the district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident whose post-office address is stated in said petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

(3) At the time specified in the notice the district court in which the petition aforesaid is filed shall hear the petition but may adjourn such hearing from time to time and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested may appear and contest the application for the order prayed for in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the prayer of the petition.

(4) The court may make such changes in the description of the lands embraced within the limits of the district as may be deemed advisable or as fact, right, and justice may require but shall not exclude from the district any lands described as a part of said district in the order creating it after the district has issued bonds or entered into a contract with the United States under 85-7-1906. However, such lands may be excluded from a district which has entered into a contract with the United States under said section, provided the secretary of the interior shall give his consent to such exclusion.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the foregoing requirements of this section or that the facts therein stated are not sustained by the evidence, then the court shall dismiss the petition at the cost of the petitioners and shall make and enter an order to that effect. If it is found that said petition substantially complies with said requirements and that the facts therein stated are sustained by the evidence, the court shall make and enter an order in accordance with the prayers of the petition.

(6) All orders and findings of the district court made under the provisions of this section shall be conclusive upon all owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days from the date of entry of such order. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein the lands included within such district are situated. There shall be omitted from such copy lands not situated in the county in which such copy is filed.

History: En. Sec. 1, Ch. 54, L. 1923; re-en. Sec. 7189.1, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1937; R.C.M. 1947, 89-1403.

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

District Court jurisdiction, Title 3, ch. 5, part 3.

General duties of Clerk of District Court, 3-5-501.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Publication of legal notices, Title 18, ch. 7, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Confirmation of Board actions by District Court, 85-7-2112.

Effect of federal involvement, 85-7-2113.

85-7-1812 through 85-7-1820 reserved.

85-7-1821. Change of boundaries of irrigation districts indebted to United States. The boundaries of any irrigation district established and organized under the laws of the state of Montana and indebted to the United States for money loaned said district may be changed in the manner hereinafter prescribed. Such change in boundaries of said district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind or nature.

History: En. Sec. 1, Ch. 132, L. 1935; re-en. Sec. 7194.1, R.C.M. 1935; R.C.M. 1947, 89-1409.

Cross-References

No impairment of contracts, Art. II, sec. 31, Mont. Const.

Effect of federal involvement, 85-7-2113.

85-7-1822. Petition to exclude lands. (1) Whenever lands have been included within the boundaries of any irrigation district of the character designated in 85-7-1821 which from their location or conformation cannot be successfully irrigated by the irrigation works or system constructed for that purpose or when the cost of irrigating the same has or will become burdensome upon the landowners of the district, the owners of said lands, with the consent of the board of commissioners of said district and the secretary of interior of the United States or such other federal authority, instrumentality, or agency as may be appropriate, may petition the district court of the county in which such lands are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands. The petition for this purpose must be signed by the owners of the land sought to be excluded and accompanied with the written consent of the board of commissioners of the district and the secretary of the interior of the United States or such other federal authority, instrumentality, or agency as may be appropriate. Such petition shall set forth:

(a) the name of the district;

(b) a particular description of the land sought to be excluded or eliminated from the district;

(c) the names of the holders of title to the lands sought to be excluded;

(d) a brief description of the character of works, water rights, canals, or works owned and acquired by the district;

(e) a statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(f) a prayer for the exclusion of the lands sought to be eliminated therefrom.

(2) The petition shall be accompanied with a map or plat of the district, showing thereon the lands sought to be eliminated therefrom, and a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and hearing thereof in the event that said petition is denied.

History: En. Sec. 2, Ch. 132, L. 1935; re-en. Sec. 7194.2, R.C.M. 1935; R.C.M. 1947, 89-1410.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Effect of federal involvement, 85-7-2113.

85-7-1823. Notice of hearing. On such petition being filed, the district court or judge thereof shall make an order fixing the time and place for a hearing and directing that notice be given. Thereupon the clerk of the court shall cause to be published at least once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the petition is filed, with preference given to a newspaper published in the county, a notice stating the time and place fixed by the district court when and where the hearing on the petition will be had and containing a brief statement of the matters set forth in the petition and the object thereof. If any portion of the lands sought to be excluded from the district lies within any other county or counties, the notice shall also be published as provided above in a newspaper of general circulation in the other county or counties, with preference given to a newspaper published in the other county or counties. The first publication of the notice may not be less than 30 days prior to the time mentioned in the notice for the hearing.

History: En. Sec. 3, Ch. 132, L. 1935; re-en. Sec. 7194.3, R.C.M. 1935; amd. Sec. 23, Ch. 460, L. 1977; R.C.M. 1947, 89-1411.

Cross-References

General duties of Clerk of District Court, 3-5-501.

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1824. Conduct of hearing. At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time not exceeding 2 weeks in all. The court, upon application of the petitioners, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the same, and the contestants and petitioners may offer any competent evidence in regard thereto.

History: En. Sec. 4, Ch. 132, L. 1935; re-en. Sec. 7194.4, R.C.M. 1935; R.C.M. 1947, 89-1412.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1825. Court order and relief granted. (1) The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as the court may deem advisable or as fact, right, and justice may require. Upon making such order excluding any lands from the district the lands so excluded shall not be liable for further assessments by the district authorities for any purpose and shall be without right to claim any interest in the water rights, canals, or other property of the district.

(2) Such order shall be conclusive upon all owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days from the entry of said order. For the purpose of such appeal, such order shall be regarded as a final judgment of said district court. A copy of said order duly certified by the clerk of court shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated.

History: En. Secs. 5, 6, Ch. 132, L. 1935; re-en. Secs. 7194.5, 7194.6, R.C.M. 1935; R.C.M. 1947, 89-1413, 89-1414.

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

Jurisdiction of judges coextensive with state, 3-5-312.

85-7-1826. Interpretation of provisions. (1) Sections 85-7-1821 through 85-7-1826 are intended to supplement but not to repeal or to change in any way the procedure authorized by 85-7-1801 through 85-7-1807 in relation to changing the boundaries of irrigation districts.

(2) The term "owners" as used in 85-7-1821 through 85-7-1826 shall include any executor, administrator, trustee of an express trust, and the guardian of any ward.

History: En. Secs. 7, 8, Ch. 132, L. 1935; re-en. Secs. 7194.7, 7194.8, R.C.M. 1935; R.C.M. 1947, 89-1415, 89-1416(part).

Cross-References

Personal representative — duties and compensation, Title 72, ch. 3, part 6.

UPC — persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

Public Administrator, Title 72, ch. 15.

Trust administration, Title 72, ch. 34.

85-7-1827 through 85-7-1830 reserved.

85-7-1831. Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition. (1) Whenever the holders of title or evidence of title to a part of the lands of an irrigation district organized and existing under the provisions of 85-7-101 through 85-7-103, which lands lie within and are served by an irrigation and/or drainage project constructed, operated, and maintained by the United States, desire a separation of said lands from said irrigation district for the purpose of forming a new district or combining with another existing district in order to cooperate with the United States as provided in 85-7-101 through 85-7-103, said separation, organization of a new district or combination with another existing district may be effected by petitioning the district court of the county in which the lands of the district or the greater portion thereof are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands and their incorporation in another existing district or in a new and separate district.

(2) Such changes shall not otherwise impair or affect the organization of the district now including said lands or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such changes not been made.

History: **En. Sec. 1, Ch. 98, L. 1933; re-en. Sec. 7187.1, R.C.M. 1935; R.C.M. 1947, 89-1315.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Obligations in general, Title 28, ch. 1.

Object of contract, Title 28, ch. 2, part 6.

Liens, Title 71, ch. 3.

Relations with United States, 85-7-1906.

85-7-1832. Petition for withdrawal of lands. The petition for this purpose must be signed by at least 75%, both in number and in acreage, of the holders of title or evidence of title (evidence as provided in 85-7-101 and 85-7-102) of the lands proposed to be eliminated from one district and incorporated in another existing district or in a new and separate district. Such petition must also bear the signature of the secretary of the interior of the United States, approving such proposed changes in district organization. Construction costs and other obligations due or to become due to the United States on account of the lands so separated and the participation of the owners thereof in contracts in effect between the original district and the United States or between the district to be extended by the addition of said lands and the United States shall be fixed and determined by said secretary of the interior.

History: **En. Sec. 2, Ch. 98, L. 1933; re-en. Sec. 7187.2, R.C.M. 1935; R.C.M. 1947, 89-1316.**

Cross-References

Relations with United States, 85-7-1906.

United States contracts — loans, sinking fund, and investment, 85-7-1951.

United States contracts — assessments, 85-7-1952.

United States contracts — court approval required, 85-7-1957.

Power to contract with United States cumulative, 85-7-1958.

85-7-1833. Proceedings subsequent to presenting petition. When said petition is duly presented to the district court, all further proceedings with reference to lands, the owners of which seek to form a new and separate district, shall be as prescribed in 85-7-101 through 85-7-103, 85-7-1504(1), 85-7-1505, and 85-7-1507, and all further proceedings with reference to lands, the owners of which desire that they be incorporated in another existing district, shall be as prescribed in 85-7-1809 and 85-7-1810, insofar as said provisions are not inconsistent with the purposes of 85-7-1831 through 85-7-1833.

History: **En. Sec. 3, Ch. 98, L. 1933; re-en. Sec. 7187.3, R.C.M. 1935; R.C.M. 1947, 89-1317.**

85-7-1834 through 85-7-1836 reserved.

85-7-1837. Limitation on irrigable acreage — special election or petition. (1) The board of commissioners of an irrigation district shall, when authorized as provided in subsection (2), limit the amount of acreage within any farm operation in the district that may be serviced by the district.

(2) In determining whether to impose an acreage limitation on a particular farm operation:

(a) the board of commissioners may submit the question to the qualified electors of the district by special election as provided in 85-7-1712; or

(b) the limitation may be imposed based on a petition signed by not less than 60% of landowners representing not less than 60% of the irrigated land within the boundaries of the irrigation district.

(3) If a limitation is imposed by special election or petition, the minimum acreage limit that may be imposed is 960 acres of land owned or leased by any individual or legal entity.

(4) An irrigation district that has imposed an acreage limitation may require certification of acreage and designation of excess acreage by the electors. Except as provided in subsection (5), the district may withhold water on all acres designated as excess acres.

(5) An individual or legal entity that owns or leases irrigated acreage in excess of the limitation at the time the process of imposing a limitation begins may continue operations without penalty and without having water withheld as long as the ownership or lease remains with that individual or legal entity.

(6) The board of commissioners may adopt regulations necessary to administer the provisions of this section.

History: En. Sec. 1, Ch. 87, L. 1995.

Cross-References

Elections, Title 85, ch. 7, part 17.

85-7-1838 through 85-7-1840 reserved.

85-7-1841. Fixing of taxable acreage. Whenever any lot, tract, or parcel of land has been heretofore or may hereafter be included within the boundaries of any public irrigation district formed under the laws of this state and the acreage thereof fixed and stated in the decree for the creation of said district or in any other proceeding relating thereto is fixed at a greater number of acres than actually exist within such lot, tract, or parcel of land or at a greater number of acres than can be irrigated from the reclamation system of said district or whenever, from any action or proceeding by or on behalf of said district or its commissioners, any such lot, tract, or parcel of land included therein has been or is about to be assessed from a greater acreage than exists therein or can be irrigated from the reclamation system of said district, the owner or holder of title or evidence of title to said lands, as defined by the irrigation district acts, may have the taxable acreage contained therein fixed and adjudicated as provided for by 85-7-1841 through 85-7-1845. However, if any bonds have been issued with the approval and pursuant to confirmation by the court then no proceeding for the determination of the acreage shall be allowed to alter or reduce in any manner the acreage subject to the lien of such bonds, in principal or interest, or of the taxes or assessments to meet the interest or principal thereof while such bonds or the interest thereon are unpaid in whole or in part. Such proceeding may still be allowed to correct or determine acreage subject to taxes or assessments for maintenance and current expenses and insofar as the latter only are to be affected.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7190, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7190, R.C.M. 1935; R.C.M. 1947, 89-1404.**

Cross-References

Evidence of title, 85-7-102.

Board powers over district property, 85-7-1908.

Purposes for which bonds may be issued, 85-7-2012.

85-7-1842. Petition for fixing of taxable area. The owner or holder of title or evidence of title, as defined by the irrigation district acts, may file in the district court of the county wherein said lands are situated a petition praying that the acreage of the lands set forth and described in such petition may be permanently fixed and adjudicated, which petition shall set forth:

(1) the name or names of the owner or owners, holder of title or evidence of title thereto, who shall be the party or parties plaintiff therein;

(2) the names and kind and character of interest of every person owning, holding, or claiming any right, title, or interest in or to the lands described in said petition, who shall, where they do not appear as parties plaintiff under subsection (1), sit as parties defendant;

(3) the name of the district in which said lands are included, together with the name of the board of commissioners thereof and the secretary thereof, and said district, its commissioners and secretary shall be made parties defendant therein;

(4) a statement of the substance of all proceedings, orders, and decrees creating said districts and fixing the acreage of the lands therein described, together with any proceedings of the board of commissioners of said district or its officers relating to the acreage thereof, to such extent as to fully inform the court of the manner and extent to which said lands have been included and taxed or assessed in said district;

(5) the actual acreage of the lands described as irrigable from the reclamation system of said district;

(6) the excess of acreage complained of;

(7) the amount of taxes previously paid on such excess acreage;

(8) a general statement of the exact nature of the relief sought and the grounds therefor.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7191, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7191, R.C.M. 1935; R.C.M. 1947, 89-1405.**

Cross-References

Property tax levies, Title 15, ch. 10.

Definitions and kinds of estates in real property, Title 70, ch. 15.

Creation of irrigation districts by percentage of titleholders, 85-7-101.

Evidence of title, 85-7-102.

Bonds for Commissioner and secretary, 85-7-1504.

85-7-1843. Summons, publication, and court determination. (1) Upon the filing of such petition, summons shall be issued thereon and served upon all parties defendant thereto, with a copy of the petition attached thereto, in the same manner and in the same form as issued in civil actions. Whenever any necessary party thereto cannot, after due diligence, be found within the state of Montana, service upon such party or parties may be had by publication of a summons, which shall be obtained, issued, and published in the same manner as a published summons in a civil action.

(2) The provisions of Title 25 and the rules of pleading and practice applicable to civil actions generally shall apply, so far as applicable, to this proceeding.

(3) If the allegations to such petition be denied, the district court shall, when the time for appearance of the parties defendant thereto has expired and said parties have appeared by answer or made default, proceed to hear and determine the issues in said proceedings as joined.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7192, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7192, R.C.M. 1935; R.C.M. 1947, 89-1406.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Process, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

85-7-1844. Decree fixing amount of irrigable acreage. Upon the hearing of said petition, the court shall, by its decree, fix and determine the irrigable acreage contained in the lots, tracts, or parcels of land complained of. The acreage so fixed by such decree shall be the acreage upon which all assessments of said lands in said irrigation district shall thereafter be based. Upon said hearing the court shall determine the amount of taxes, if any, which have theretofore been levied and assessed upon any excess or nonexistent acreage and shall enter judgment in favor of the owner or holder thereof and against said district for the excess of taxes theretofore collected by said district or shall cancel such excess if the same shall not have been collected for the benefit of said district. However, no judgment for the recovery of excess taxes paid shall be entered against any district until there shall have been deducted therefrom any unpaid valid taxes and assessments levied and assessed for the benefit of said district against the lands described in said petition, and all sums so recovered shall bear interest at the rate of 8% per annum from the date of payment by the landholder. Said judgment shall bear legal interest from the date of entry, and the judgment so rendered may be paid by warrants or funds of said future taxation upon said lands. Costs shall be allowed to the plaintiff in the same manner as other civil actions.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7193, R.C.M. 1921; re-en. Sec. 7193, R.C.M. 1935; R.C.M. 1947, 89-1407.**

Cross-References

Property tax levies, Title 15, ch. 10.

Costs, Title 25, ch. 10.

All irrigable lands chargeable alike, 85-7-2103.

85-7-1845. Appeal to supreme court. From any such judgment or decree an appeal may be taken to the supreme court by any party thereto at any time within 10 days of the entry of said judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by Title 25 governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid or, if taken, the judgment or decree of the district court shall be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon the parties thereto. In case contract has been made between the district and the United States, as provided in 85-7-1906, no change shall be made in the boundaries of the district, and the district court shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the district court.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7194, R.C.M. 1921; re-en. Sec. 7194, R.C.M. 1935; R.C.M. 1947, 89-1408.

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

85-7-1846. *(Temporary)* **Small-tract petition to exclude land from district.** (1) When an irrigation district has become urbanized to such a degree that the average parcel size in the district is less than 3 acres, a person holding title to a tract of land meeting the criteria in 85-7-1802(2) may petition the district court for an exclusion of the person's tract from an irrigation district, a subdistrict, or a combination of a district and subdistrict. The petition must be signed by all persons who hold title to the tract to be excluded and must specify:

(a) the name of the irrigation district;

(b) the name and address of the persons holding title to the tract;

(c) evidence of title to the tract to be excluded, as provided in 85-7-101 and 85-7-102;

(d) a copy of a map or plat of the irrigation district showing the location of the tract sought to be excluded and the relation of that land to the works of the district;

(e) a statement, corroborated by adequate documentation, that the users of the tract do not and cannot feasibly obtain water from the irrigation district through existing irrigation works;

(f) a copy of a recent tax statement documenting assessment of the tract by the irrigation district; and

(g) a request that the tract be excluded.

(2) Prior to filing the petition with the court, the petitioner shall mail a copy of the completed petition to the irrigation district subject to the petition.

(3) The petitioner shall file the petition, proof of mailing pursuant to subsection (2), and a $20 fee with the clerk of the district court for the court in which the irrigation district was created.

(4) Within 15 days of the date of the filing of the petition, the irrigation district may file an objection to the petition. To be valid, the objection must provide sufficient evidence that the conditions set forth in 85-7-1802(2) do not apply to the tract petitioned for exclusion.

(5) If a valid objection is filed, the court may hold a hearing if necessary to resolve the facts of the petition.

(6) The court shall grant the petition for exclusion:

(a) if no objections are filed within 15 days of filing the petition; or

(b) upon determination of the court that the petition is sufficient.

(7) The court shall forward to the irrigation district a copy of the order granting the exclusion.

(8) A petition granted in this section excludes the petitioned tract from the irrigation district for all purposes, except that it remains subject to

assessment for any existing district debt. *(Terminates December 31, 1998—sec. 5, Ch. 306, L. 1997.)*

History: En. Sec. 1, Ch. 306, L. 1997.

Compiler's Comments

Effective Date: Section 4, Ch. 306, L. 1997, provided that this section is effective July 1, 1997.

Termination: Section 5, Ch. 306, L. 1997, provided that this section terminates December 31, 1998.

Part 19
Operation of Districts

Part Cross-References

Conservation districts — operation, Title 76, ch. 15, part 4.

Drainage districts — organization and operation, Title 85, ch. 8, part 3.

Conservancy districts — organization and procedure, Title 85, ch. 9, part 4.

85-7-1901. Board plan for acquisition and construction. (1) For the purpose of purchasing or constructing the necessary irrigation canals or works or acquiring the necessary property and rights therefor and otherwise carrying out the provisions of this chapter, the board of commissioners of any irrigation district must, as soon as practicable after such district has been organized, formulate a general plan for such purchase, construction, and acquisition of such property. The board shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plans, as well as of procuring water from other and different sources, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased.

(2) All such surveys, examinations, maps, plans, and estimates shall be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all such necessary surveys, examinations, maps, plans, and estimates must be certified to by him. When all such are completed, he shall submit them with all proper field notes to and file them with the board of commissioners, accompanied by his report and recommendation thereon. This report shall include a discussion of said plans submitted by him to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, of the probability of being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendation in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district. Such report shall be accompanied by a map, when such is necessary for a proper explanation or understanding of the same.

(3) Upon receiving such report, said board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of said proposed property, canals, or irrigation works and system and within 10 days after arriving at such determination shall cause the secretary of said board to notify all persons or corporations holding title or evidence of title to lands within said district (ascertained as provided in 85-7-101 and 85-7-102) of the filing of said report and their determination

thereon. Said notices shall be given through the United States mail by letter addressed to such person or corporation at the last known post-office address of each person or corporation aforesaid. A certificate of the secretary of the board as to the fact of mailing said notice, affixed to a copy of said notice and recorded in the record book of said board of commissioners, shall be sufficient and conclusive evidence of such fact.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(12).

Cross-References

Engineers and land surveyors, Title 37, ch. 67.

Utilization of water, Title 85, ch. 2, part 4.

85-7-1902. Management of district by board. (1) The board of commissioners of every irrigation district established and organized under and by virtue of parts 1 and 15 of this chapter shall constitute the corporate authority of said district.

(2) The board shall have the power and it shall be the duty of the members thereof to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; and employ and appoint such agents, officers, and employees as may be required and prescribe their duties.

(3) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this chapter or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by attorneys and in the name of such irrigation district.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the district and for the protection and preservation of the works and other property of the district, and the board may therein require the prompt payment of all current and delinquent taxes and assessments and other financial obligations owing the district as a prerequisite to water service. The bylaws and rules shall be printed in convenient form for distribution in the district. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(5) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this chapter.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(intro.), (1), (10), (11), (13); amd. Sec. 1, Ch. 262, L. 1983.

Cross-References

Organization of Board of Commissioners and establishment of office, 85-7-1502.

85-7-1903. Entry upon land by board or agent. The board and its agents and employees shall have the right to enter upon any land to make surveys and may locate the necessary irrigation works, including drainage works and the line for any canal or canals and necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(2).

Cross-References

Surface water and ground water — entry on land, 85-2-115.

85-7-1904. Acquisition of water and waterworks by board. (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire, by purchase, lease, or contract, water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

(2) The board may contract with the owner or owners of canals, reservoirs, dams, and other works purchased and in the course of construction for the completion thereof.

(3) A purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of $150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, may not be entered into by the district without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district or, if the purchase, lease, or contract substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict. Any splitting or division of a purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section renders the divided or split contract or contracts void.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch.

307, L. 1975; R.C.M. 1947, 89-1301(3), (5); amd. Sec. 4, Ch. 326, L. 1979; amd. Sec. 7, Ch. 112, L. 1981; amd. Sec. 1, Ch. 328, L. 1983; amd. Sec. 1, Ch. 165, L. 1987; amd. Sec. 8, Ch. 439, L. 1989.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Management of property — water contracts, 85-1-211.

Utilization of water, Title 85, ch. 2, part 4.

85-7-1905. Board agreements for joint operations or cooperation. (1) The board shall have power and authority to enter into and do any acts necessary or proper for the performance of any agreements with any state, county, district of any kind, public or private corporation, association, firm, or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works, or other property of a kind which might lawfully be acquired or owned by the irrigation district.

(2) The board may acquire the right to store water in any reservoir or to carry water through any canal, ditch, or conduit not owned or controlled by the district and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch, or conduit of the district.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(4).

Cross-References

Joint operations, Title 85, ch. 7, part 16.

85-7-1906. Relations with United States. (1) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of congress of August 11, 1916, the board shall have authority to make such investigations and base thereon such representations and assurances to the secretary of the interior as may be requisite.

(2) The board may enter into any obligation or contract with the United States:

(a) for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom and the necessary drainage works;

(b) for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the federal Reclamation Act of June 17, 1902, all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or

(c) for a water supply under any act of congress providing for or permitting such contract.

(3) In case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at 90% of their par value, to the amount to be paid by the district to the United States under any such contract. The interest on said bonds of the district and regularly paid to the United States is to be applied as provided in such contract. If bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include, as part of any levy or assessment

provided for in 85-7-2101 or 85-7-2132, an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of money for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action. The board shall have full power to do all things required by the federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(6), (7); amd. Sec. 5, Ch. 326, L. 1979.**

Cross-References

Contracts — object of contract, Title 28, ch. 2, part 6.

Contracts with state agencies and counties, 85-1-224.

Limitations on debt-incurring power, 85-7-2001.

85-7-1907. Board power to provide sufficient water. The board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district or any subdistrict in the district, from one or more sources and from different and additional sources; operate such works; secure, in any of the manners provided in this chapter, additional water supplies from the same or different sources; and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district or subdistrict included at the time of its organization or at any time thereafter.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(8); amd. Sec. 9, Ch. 439, L. 1989.**

Cross-References

Transfer of real property, Title 70, ch. 20.

85-7-1908. Board powers over district property. (1) The board may take conveyances or other assurances for all property acquired by it under the provisions of this chapter, in the name of the district, to and for the uses and purposes in this chapter.

(2) The legal title to all property acquired by or for any irrigation district or any subdistrict in the district under the provisions of this chapter shall immediately and by operation of law vest in that district, as set forth in this chapter. The board of commissioners may hold, use, maintain, acquire, manage, occupy, and possess that property, as provided in this chapter. Any property acquired by the district may be conveyed to the United States for the construction, operation, and maintenance of works by the United States for the benefit of the district or a subdistrict in the district under any contract that may be entered into with the United States pursuant to this chapter.

History: **(1)En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec.**

4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; Sec. 89-1301, R.C.M. 1947; (2)En. Sec. 30, Ch. 146, L. 1909; amd. Sec. 5, Ch. 153, L. 1917; re-en. Sec. 7200, R.C.M. 1921; re-en. Sec. 7200, R.C.M. 1935; Sec. 89-1605, R.C.M. 1947; R.C.M. 1947, 89-1301(9), 89-1605; amd. Sec. 10, Ch. 439, L. 1989.

85-7-1909. Rights-of-way for irrigation works. (1) The board of commissioners shall have the power to construct irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross in such manner as to afford security to life and property. Said board shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. Every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersection and crossing, and if such railroad company or the owners and controllers of said property, thing, or franchise so to be crossed and said board cannot agree upon the amount to be paid therefor or the points or the manner of said crossing or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) Nothing contained herein shall require the payment to the state or any subdivision thereof of any sum for the right to cross any public highway with any such works. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain said works over and through any of the lands which are now or hereafter may be the property of this state.

History: En. Sec. 26, Ch. 146, L. 1909; re-en. Sec. 7196, R.C.M. 1921; re-en. Sec. 7196, R.C.M. 1935; R.C.M. 1947, 89-1601.

Cross-References

Railroads — crossing of roads and streams, 69-14-535.

Construction across streams, highways, or other obstacles, 85-1-208.

85-7-1910. Board power to dispose of district property. (1) The board of commissioners may, with the written consent of a majority in number and acreage of the owners of the lands in the district or, if the leased property substantially benefits a subdistrict in the district, of a majority in number and acreage of the owners of lands within the subdistrict, lease in whole or in part the system of canals and works or water belonging to the district, whenever the leasing is considered for the benefit of the district or subdistrict, if the leased property substantially benefits the subdistrict. When the board contemplates the leasing of the canals or works or water of a district or subdistrict, it shall declare the availability of the lease by resolution or order and give notice by publication in a newspaper published in the county in which the office of that irrigation district is situated at least 2 calendar weeks prior to the making of any lease. A lease may not be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district or, if the lease substantially benefits a subdistrict, a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict, file with the board a written consent to make the lease. The lease may not interfere with any rights that have been established by law at the time the lease is made, nor may the lease operate to deprive any owner or owners of land in the district of the use of water from the works upon the lands. The board of commissioners shall require a sufficient bond to secure the faithful performance of the lease by the lessee.

(2) In addition to all other powers granted to any irrigation district existing under the laws of Montana for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, that may be required by the department as a condition to furnishing financial aid or assistance.

(3) If an irrigation district has ceased operation, the district prior to its dissolution may convey, assign, transfer, and set over to any person or association of persons all or any part of its property described in subsection (2), for the purpose of irrigating and reclaiming any or all other land that can be served and irrigated.

History: (1)En. Sec. 29, Ch. 146, L. 1909; re-en. Sec. 7199, R.C.M. 1921; re-en. Sec. 7199, R.C.M. 1935; Sec. 89-1604, R.C.M. 1947; (2)En. Sec. 1, Ch. 191, L. 1937; amd. Sec. 166, Ch. 253, L. 1974; Sec. 89-1905, R.C.M. 1947; (3)En. Sec. 2, Ch. 191, L. 1937; Sec. 89-1906, R.C.M. 1947; R.C.M. 1947, 89-1604, 89-1905, 89-1906; amd. Sec. 11, Ch. 439, L. 1989; amd. Sec. 304, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in first sentence after "owners of lands within the subdistrict", deleted "to" and in last sentence, before "sufficient", deleted "good and"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Guaranty — general provisions, Title 28, ch. 11, part 1.

Landlord and tenant — commercial property, Title 70, ch. 26, part 2.

Acquisition of property by Department, 85-1-209.

Disposal of property by Department to other public bodies, 85-1-210.

Management of property — water contracts, 85-1-211.

Construction capital projects funds, 85-1-322.

85-7-1911. Apportionment of water by board. (1) The board of commissioners shall apportion the water for irrigation among the lands in the district or a subdistrict in the district in a just and equitable manner, and the maximum amount apportioned to any land shall be the amount that can be beneficially used on the land. The amount of water is appurtenant to the land and inseparable from it but subject to reduction as provided in this chapter.

(2) In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced proportionately.

(3) All surplus water belonging to the district may be sold or disposed of by the board for the benefit of the district or for the benefit of a subdistrict if the surplus water is derived from water that attaches to the substantial benefit of the subdistrict.

(4) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of the contract.

History: (1)En. Sec. 32, Ch. 146, L. 1909; amd. Sec. 6, Ch. 145, L. 1915; re-en. Sec. 7202, R.C.M. 1921; re-en. Sec. 7202, R.C.M. 1935; amd. Sec. 1, Ch. 314, L. 1977; Sec. 89-1607, R.C.M. 1947; (2)En. Sec. 33, Ch. 146, L. 1909; amd. Sec. 7, Ch. 145, L. 1915; re-en. Sec. 7203, R.C.M. 1921; re-en. Sec. 7203, R.C.M. 1935; Sec. 89-1608, R.C.M. 1947; (3), (4)En. Sec. 34, Ch. 146, L. 1909; amd. Sec. 8, Ch. 145, L. 1915; re-en. Sec. 7204, R.C.M. 1921; re-en. Sec. 7204, R.C.M. 1935; Sec. 89-1609, R.C.M. 1947; R.C.M. 1947, 89-1607, 89-1608, 89-1609; amd. Sec. 12, Ch. 439, L. 1989.

Cross-References
Utilization of water, Title 85, ch. 2, part 4.

85-7-1912. Exchange of water by board. (1) Whenever any canal constructed, owned, or controlled by the district crosses any creek, stream, water channel or course, the water of which is used to irrigate land lying below such canal, the district shall have the right to contract with the owner or owners of the right to the use of the water or waters in any such stream, creek, water channel or course for an exchange of water and to supply him with water from the district system. The contract shall be in writing, signed and acknowledged by all the parties thereto before some officer authorized to take acknowledgments, and shall be filed and recorded in the office of the clerk and recorder of the county in which the creek, stream, water channel or course is situated. The acknowledgment shall be certified by such officer in the manner that deeds are now required to be certified to entitle them to be recorded. Thereafter, such district shall have the right to supply such land below the canal, whether such land is included in the district or not, with water from the works of the district, and the owner or lessee of such land shall, in such case, be furnished with the same quantity of water as that to which such owner or lessee would be entitled out of such creek, stream, water channel or course had the district works not been built.

(2) The district shall have the right to appropriate and take possession of the water so replaced and shall have the same right to such water as the owner or lessee of the land had, so long as such water shall be replaced by a like quantity of water from such works. The appropriating and taking of such water by the district shall never deprive such owner or lessee of the right to retake and use the same should such owner or lessee at any time be prevented from having or using a like quantity of water from such works. The district shall also have the right to make appropriation and take possession of such water at any point and to sell, lease, or use such water on any land, either above or below the canal, and the appropriation of such water at any point or selling, leasing, or using the same shall not prejudice the right of the district to the water and shall not increase the rights of the owner or owners of any other water right on such creek, stream, water channel or course.

(3) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: En. Sec. 36, Ch. 146, L. 1909; amd. Sec. 9, Ch. 145, L. 1915; re-en. Sec. 7206, R.C.M. 1921; re-en. Sec. 7206, R.C.M. 1935; R.C.M. 1947, 89-1611.

Cross-References
Management of property — water contracts, 85-1-211.
Utilization of water, Title 85, ch. 2, part 4.

85-7-1913. Board to maintain records. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of commerce. The department of commerce shall prescribe forms for the use of irrigation districts. The books and records must be open to the inspection of any landowner of the district the same as other public records.

(2) The books and records of irrigation districts are subject to audit in accordance with 2-7-503.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district that are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with this section or 85-7-1914 is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and must be paid as are other bills against the districts.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R.C.M. 1921; re-en. Sec. 7260, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975; R.C.M. 1947, 89-2107(1), (2), (4); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 12, Ch. 179, L. 1995.

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Audits of political subdivisions, Title 2, ch. 7, part 5.

County Attorney — other duties, 7-4-2717.

85-7-1914. Board to file annual report. The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within 10 days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time and shall publish the report at least once in a newspaper of the county.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R.C.M. 1921; re-en. Sec. 7260, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975; R.C.M. 1947, 89-2107(3).

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Publication of legal records, Title 18, ch. 7, part 2.

Required records and audits, 85-7-1616.

85-7-1915 through 85-7-1920 reserved.

85-7-1921. Distribution system defined. The words "distribution system", as used in 85-7-1922 through 85-7-1925, denotes the entire works and property of all irrigation districts, including main ditches and canals, laterals, bilaterals, headgates, flumes, spillways, boxes, and all other appliances and means by which the waters of any irrigation district, including a subdistrict in the district, are or shall be apportioned or distributed for use.

History: En. Sec. 1, Ch. 63, L. 1935; re-en. Sec. 7207.1, R.C.M. 1935; R.C.M. 1947, 89-1613; amd. Sec. 13, Ch. 439, L. 1989.

Cross-References

Works defined, 85-1-102.

85-7-1922. Regulation, supervision, apportionment, and control of water distribution. (1) In addition to all other powers granted them by the laws of Montana, boards of commissioners of all irrigation districts organized under any law of this state may regulate, supervise, apportion, and control the furnishing and delivery of water through the distribution system of the district. The authority to regulate, supervise, apportion, and control does not apply to users who have water rights or ditch rights, established, acquired by court decree, use, appropriation or otherwise, at the time or prior to the organization of the district, without regard to whether the distribution system or a portion of the system belongs to the district or to the owner of lands served by the district.

(2) Notwithstanding the provisions of 85-7-1921 and the powers granted to the board of commissioners under subsection (1) of this section, the irrigation district is not required to:

(a) construct, operate, or maintain internal delivery systems; or

(b) divide irrigation water after the water is delivered to the established project delivery points.

History: En. Sec. 2, Ch. 63, L. 1935; re-en. Sec. 7207.2, R.C.M. 1935; R.C.M. 1947, 89-1614; amd. Sec. 4, Ch. 136, L. 1993.

Cross-References

Rights and duties of water users, Title 85, ch. 5, part 3.

Water ditches under joint or corporate control, Title 85, ch. 5, part 4.

Board of Control — powers and duties, 85-7-1612.

85-7-1923. Entry on land. In carrying out the authority granted them by 85-7-1921 through 85-7-1925, it shall be lawful for boards of commissioners of irrigation districts to enter upon the lands of any user of water supplied by said district for the purpose of installing, adjusting, or regulating headgates, lock boxes, or other devices for regulating the flow of water or apportioning the equitable distribution thereof.

History: En. Sec. 3, Ch. 63, L. 1935; re-en. Sec. 7207.3, R.C.M. 1935; R.C.M. 1947, 89-1615.

Cross-References

Surface water and ground water — entry on land, 85-2-115.

85-7-1924. Interference with commissioners or distribution system — penalty. Any person who in any manner interferes with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by 85-7-1921 through 85-7-1925 or who changes or tampers with any lock box, headgate, or other device for the apportionment or distribution of water installed by or under the authority of the commissioners or who in any manner obstructs or changes the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district shall, in the discretion of the commissioners, be subject to a forfeiture of his right to the delivery of water through the distribution system of the district so long as such acts continue and is guilty of obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by 45-7-302 or 45-6-101, as applicable.

History: **En. Sec. 4, Ch. 63, L. 1935; re-en. Sec. 7207.4, R.C.M. 1935; amd. Sec. 24, Ch. 460, L. 1977; R.C.M. 1947, 89-1616.**

Cross-References

Prevention of waste, 85-2-114.

Rights and duties of water users, Title 85, ch. 5, part 3.

Water ditches under joint control — interference with actions of Commissioner, 85-5-406.

85-7-1925. Installing and assessing costs of distributing or measuring devices. Whenever, in the judgment of the commissioners of any irrigation district, it is necessary for the proper measurement, distribution, or apportionment of the water of the district to install lock boxes, headgates, or other devices for the distribution of water at the point where any lateral is taken out of a main ditch or canal or at a point where any sublateral is taken out of a lateral for further division or distribution of water, they shall have the authority to procure and install the same and to assess the cost thereof against the lands affected thereby.

History: **En. Sec. 5, Ch. 63, L. 1935; re-en. Sec. 7207.5, R.C.M. 1935; R.C.M. 1947, 89-1617.**

Cross-References

Department powers and duties, 85-2-113.

Duty of purchaser to dig ditches, 85-2-416.

Distribution of water and related expenses, 85-5-201.

85-7-1926 through 85-7-1930 reserved.

85-7-1931. Use of water for irrigation a public use. (1) The use of all water required for the irrigation of the land of any district formed under the provisions of part 1, together with the rights-of-way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this chapter, is hereby declared to be a public use, subject to the regulations and control of the state in the manner prescribed by law.

(2) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: **En. Sec. 31, Ch. 146, L. 1909; amd. Sec. 5, Ch. 145, L. 1915; re-en. Sec. 7201, R.C.M. 1921; re-en. Sec. 7201, R.C.M. 1935; R.C.M. 1947, 89-1606.**

Cross-References

Public uses enumerated, 70-30-102.

85-7-1932. Noninterference with navigation or water rights. Navigation shall never in anywise be impeded by the operation of this chapter, nor shall any vested interest in or to any mining or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially by the owners or possessors thereof in connection with any mining or agricultural industry or by persons purchasing or renting the use thereof or in or to any other property now used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry ever be affected by or taken under its provisions, save and except that rights-of-way may be acquired over the same. The right of eminent domain shall not be otherwise considered abridged by the provisions hereof.

History: **En. Sec. 27, Ch. 146, L. 1909; re-en. Sec. 7197, R.C.M. 1921; re-en. Sec. 7197, R.C.M. 1935; R.C.M. 1947, 89-1602.**

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Interference with navigable water as nuisance, 27-30-101, 45-8-111.

Eminent domain, Title 70, ch. 30.

Navigable waters, 85-1-112.

85-7-1933. Diversion of waters. Nothing herein contained shall be deemed to authorize the diversion of the waters of any river, creek, stream, canal, or ditch from its channel to the detriment of any person or persons having an interest in such river, creek, stream, canal, ditch, or the waters therein.

History: En. Sec. 28, Ch. 146, L. 1909; re-en. Sec. 7198, R.C.M. 1921; re-en. Sec. 7198, R.C.M. 1935; R.C.M. 1947, 89-1603.

Cross-References

Right to appropriate, 85-2-301.

Utilization of water, Title 85, ch. 2, part 4.

85-7-1934. Lands under irrigation — inclusion in district. (1) Any land already under irrigation from any source may be included in any irrigation district, either at the time of the organization of such district or at any time thereafter, and such land shall be entitled to receive and shall be given the same amount of water necessarily used thereon at the time of such inclusion. The canals, ditches, flumes, dams, or other works previously used to irrigate such land may be used or supplanted either wholly or in part by the district works. The owner of such land, canals, ditches, flumes, dams, or other works shall be entitled to compensation for any and all damage sustained by reason of the appropriation of the same or by the construction of said district works.

(2) Lands already under irrigation, lands having water rights appurtenant thereto, or lands which can be irrigated from sources more feasible than the district system shall not be included within such district unless the owner of such lands shall consent in writing to have such lands included in said district.

(3) Districts formed to cooperate with the United States may extend their boundaries to include such lands upon petition of the owners of two-thirds only of the acreage of the lands to be included, and the boundaries shall be susceptible of change as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845.

(4) All lands having water rights appurtenant thereto which are served by a system of irrigation works supplying more than 10,000 acres of land may, in the discretion of the court, be included in the proposed district, on petition of at least a majority both in number and acreage of the holders of title or evidence of title to the land having water rights appurtenant thereto and served by the same system of irrigation works.

History: En. Sec. 35, Ch. 146, L. 1909; amd. Sec. 6, Ch. 153, L. 1917; amd. Sec. 4, Ch. 116, L. 1919; re-en. Sec. 7205, R.C.M. 1921; re-en. Sec. 7205, R.C.M. 1935; R.C.M. 1947, 89-1610.

Cross-References

Adjudication of water rights, Title 85, ch. 2, part 2.

Creation of districts — generally, Title 85, ch. 7, part 1.

Creation of districts — adjudicated streams, Title 85, ch. 7, part 2.

Creation of districts — sections not applicable, 85-7-304.

85-7-1935. Lands under irrigation — limits on charges for costs. Where lands already under irrigation are included in any district, the water and irrigation works irrigating the same belonging to the owner of said lands, such lands shall not be charged with any tax or assessment for construction or for payment of the interest or principal of any bonds issued to secure money for construction or purchase of the district irrigation works or for any payments other than for operation and maintenance due or to become due under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, except with the consent of the owner thereof, which consent shall be filed with the recorder of deeds of the county in which such lands are situated. Such lands shall be assessed for administrative and maintenance purposes the same as other lands in the district.

History: **En. Sec. 37, Ch. 146, L. 1909; amd. Sec. 10, Ch. 145, L. 1915; re-en. Sec. 7207, R.C.M. 1921; re-en. Sec. 7207, R.C.M. 1935; R.C.M. 1947, 89-1612.**

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Taxes and assessments, Title 85, ch. 7, part 21.

85-7-1936 through 85-7-1940 reserved.

85-7-1941. Contracts. (1) The construction by the district of irrigation works may be done by the district, by private owners, or by contract.

(2) Before any contract is let, the board of commissioners shall provide surveys, plans, maps, and estimates, which shall include everything necessary to show the entire cost in detail of everything necessary to complete the work required to irrigate any of the lands in the district under the proposed system.

(3) Notice of any contract to be awarded for the construction of such works shall state where the plans and specifications may be seen and shall be published at least once a week for 3 successive calendar weeks in a newspaper published or of general circulation in the county where the office of the district is located. Sealed bids shall be called for in such published notice, and bids shall be opened in public.

History: **En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part); amd. Sec. 8, Ch. 112, L. 1981.**

Cross-References

Public contracts generally, Title 18, ch. 1.

Publication of legal notices, Title 18, ch. 7, part 2.

Contracts, Title 28, ch. 2, 3.

Creation of districts — common water supply — sections not applicable, 85-7-304.

85-7-1942. Competitive bidding. The contract shall be awarded only to the lowest responsible bidder, who shall be required to give bond for the faithful performance and completion of the contract. The board shall have the right to reject any and all bids in its discretion.

History: **En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).**

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Resident defined, 18-1-103.

Public contracts — bid security, Title 18, ch. 1, part 2.

Creation of districts — common water supply — sections not applicable, 85-7-304.

85-7-1943. Exceptions for certain projects. The provisions of 85-7-1941 and 85-7-1942 shall not apply to:

(1) any contract for the completion of works in course of construction by private owners, from whom said works may be acquired under the provisions of 85-7-1904 or 85-7-1905;

(2) any contract between the district and the United States.

History: **En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).**

Cross-References

Contracts with United States, 85-1-221.

Indian and federal water rights, Title 85, ch. 2, part 7.

Creation of districts — common water supply — sections not applicable, 85-7-304.

Change of boundaries of irrigation districts indebted to United States, 85-7-1821.

Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition, 85-7-1831.

85-7-1944 through 85-7-1950 reserved.

85-7-1951. United States contracts — loans, sinking fund, and investment. The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interest of the district, shall have the power and authority to enter into any obligation or contract with the United States under any act of congress and the rules and regulations established thereunder, providing for or permitting such obligation or contract, for the purpose of obtaining from the United States a loan of money to be used by the district for the liquidation of bonded or other outstanding indebtedness of the district or for doing or causing to be done, under the supervision of the secretary of the interior of the United States, any construction, betterments, or repair work necessary to place the irrigation system of the district in good operating condition. The board shall also have the power and authority to create, by proper levy and collection of assessments, a sinking fund which shall be available for the construction of betterments to the irrigation system of the district, as may become necessary during the term of any contract made hereunder. Said sinking fund for said purpose, which shall be designated the ".... District Sinking Fund for Betterments", shall be in such an amount and shall be created within such time as may be agreed upon between the district and the United States. The board shall also have the power and authority to invest any surplus in the sinking fund herein provided for in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations.

History: **En. Sec. 1, Ch. 24, L. 1931; re-en. Sec. 7264.10, R.C.M. 1935; R.C.M. 1947, 89-2120; amd. Sec. 1, Ch. 166, L. 1987.**

85-7-1952. United States contracts — assessments. In any contract entered into between an irrigation district and the United States hereunder, the board of commissioners shall have the power to levy assessments for the United States contract fund against all of the land within the district for any and all of the purposes enumerated in the laws of Montana and, in addition thereto, the power to levy assessments in compliance with such contract, including such deficiency assessments as will enable the district to meet established or estimated delinquencies in making payments to the United States because of the failure of landowners to pay the assessments levied against their lands in the district.

History: **En. Sec. 2, Ch. 24, L. 1931; re-en. Sec. 7264.11, R.C.M. 1935; R.C.M. 1947, 89-2121.**

85-7-1953. Amount owed United States — lien and special tax. All amounts to be paid to the United States under any contract made hereunder between the district and the United States shall be a general obligation of the district, and said amounts to be paid to the United States shall be a lien upon the irrigation system of the district. All lands now within the district or hereafter embraced within the district shall be subject to a special tax or assessment for the payment of all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment shall constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

History: En. Sec. 3, Ch. 24, L. 1931; re-en. Sec. 7264.12, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1955; R.C.M. 1947, 89-2122.

85-7-1954. Assumption of operations by United States upon default. In addition to other legal remedies, the board of commissioners of the district shall have the power and authority to provide in any contract executed between the United States and the district hereunder that in case of default for more than 12 months in the payment of any installments due under such contract, the control, operation, and maintenance of the district may, in the discretion of the secretary of the interior, be assumed by the United States and the delivery of water withheld until payments are duly made in accordance with the contract requirements.

History: En. Sec. 4, Ch. 24, L. 1931; re-en. Sec. 7264.13, R.C.M. 1935; R.C.M. 1947, 89-2123.

85-7-1955. Liquidation of indebtedness with federal funds. When money is provided by the United States for liquidating bonded indebtedness of any irrigation district, the county treasurer is authorized and empowered to cancel the district bonds so liquidated and surrender them to the United States, taking therefor a receipt signed by the secretary of the interior, which receipt shall be placed in the records of the county treasurer and shall be conclusive evidence of the cancellation and surrender of the district bonds.

History: En. Sec. 5, Ch. 24, L. 1931; re-en. Sec. 7264.14, R.C.M. 1935; R.C.M. 1947, 89-2124.

85-7-1956. Majority vote or petition necessary to contract with United States. No contract shall be made with the United States hereunder except upon approval of a majority of those voting on the question at an election conducted pursuant to 85-7-1710, provided that the voting majority must own at least 50% of the acreage included within the district, or upon a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district. Such petition shall be addressed to the board of commissioners, shall set forth the aggregate amount of money to be borrowed from the United States and the purpose or purposes thereof, shall have attached thereto an affidavit certifying the signatures to said petition, and shall be filed with the secretary of the board of commissioners. Such petition may consist of one or more parts or papers.

History: En. Sec. 6, Ch. 24, L. 1931; re-en. Sec. 7264.15, R.C.M. 1935; R.C.M. 1947, 89-2125; amd. Sec. 1, Ch. 463, L. 1983.

85-7-1957. United States contracts — court approval required. (1) The board of commissioners of any irrigation district, before the making of any contract with the United States hereunder, shall commence a special proceeding in the district court of the state, by which the proceedings of the board and of the district leading up to the making of any such contract and the validity of the terms thereof shall be judicially examined and approved and affirmed or disapproved and disaffirmed.

(2) The practice and procedure for the confirmation of any step or action, as provided in subsection (1) shall be as nearly as possible in conformity with the practice and procedure now provided for the confirmation before the issuance and sale of bonds of an irrigation district. The court may approve and affirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible, the court shall remedy and cure all defects in said proceedings.

History: (1)En. Sec. 7, Ch. 24, L. 1931; re-en. Sec. 7264.16, R.C.M. 1935; amd. Sec. 39, Ch. 460, L. 1977; Sec. 89-2126, R.C.M. 1947; (2)En. Sec. 8, Ch. 24, L. 1931; re-en. Sec. 7264.17, R.C.M. 1935; Sec. 89-2127, R.C.M. 1947; R.C.M. 1947, 89-2126, 89-2127.

Cross-References

District Court confirmation before issuance and sale of bonds of irrigation district, 85-7-2016, 85-7-2017.

85-7-1958. Power to contract with United States cumulative. Sections 85-7-1951 through 85-7-1958 shall not limit the power and authority of an irrigation district or the commissioners thereof to contract with the United States under other applicable statutes but shall be cumulative thereto.

History: En. Sec. 9, Ch. 24, L. 1931; re-en. Sec. 7264.18, R.C.M. 1935; R.C.M. 1947, 89-2128.

85-7-1959 and 85-7-1960 reserved.

85-7-1961. Districts organized prior to certain date — authority to continue electrical power operations. (1) An irrigation district or project that was organized prior to March 30, 1981, under Title 85, chapter 7, is authorized to continue all electrical power operations it conducted prior to March 30, 1981.

(2) Electrical power operations authorized by subsection (1) of this section include generation, distribution, and sale of electrical power and the reasonable and necessary means to carry out such operations.

(3) In addition to the authority otherwise provided in this section and Title 85, chapter 7, irrigation districts or projects organized under Title 85, chapter 7, or described in 85-7-110, may construct, install, operate, and maintain facilities to generate, transmit, and sell, as well as any associated facilities necessary to that end, electricity using the water power potential of irrigation projects or works or federally owned water impoundment projects where electric power generation facilities have not heretofore been installed and licensed under the Federal Power Act.

History: En. Sec. 1, Ch. 179, L. 1981; amd. Sec. 1, Ch. 553, L. 1983.

Cross-References

Small power production facilities, Title 69, ch. 3, part 6.

85-7-1962 through 85-7-1970 reserved.

85-7-1971. Contracts with the state of Montana — loans, sinking fund, and investments. (1) The board of commissioners of any irrigation district, whenever considered advisable and in the interest of the district, may enter into any obligation or contract with the state of Montana for the purpose of obtaining a loan of money from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, to be used by the district for:

(a) the liquidation of any bonded or outstanding indebtedness of the district; or

(b) the provision of any construction, improvement, or repair work necessary to place the irrigation system of the district in good operating condition.

(2) The board shall create, by proper levy and collection of assessments, a sinking fund that must be available for the construction of betterments to the irrigation system of the district as may be necessary during the term of any contract made with the state as provided for in subsection (1). The sinking fund must be designated the "... District Sinking Fund for Betterments" and must be created in such an amount and within such time as may be agreed upon between the district and the state of Montana.

(3) The board shall invest any surplus in the sinking fund in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations.

History: En. Sec. 1, Ch. 301, L. 1987.

Cross-References

Public contracts generally, Title 18, ch. 1.

85-7-1972. State contracts — assessments. In any contract entered into between an irrigation district and the state of Montana under 85-7-1971 through 85-7-1975, the board of commissioners shall, in compliance with such contract, levy assessments against the lands benefited by the contract within the district, including such deficiency assessments as will enable the district to meet established or anticipated delinquencies in making payments to the state of Montana because of the failure of landowners to pay the assessments levied against their lands in the district.

History: En. Sec. 2, Ch. 301, L. 1987.

85-7-1973. Amount owed the state — lien and special tax. All amounts owed to the state under any contract made under 85-7-1971 through 85-7-1975 between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. All lands now within the district or hereafter embraced within the district are subject to a special tax or assessment for the payment of all amounts owed to the state under such contract between the district and the state of Montana, and this special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes.

History: En. Sec. 3, Ch. 301, L. 1987.

Cross-References

State tax liens, Title 15, ch. 16, part 4.

85-7-1974. Majority vote or petition necessary to contract with the state. (1) No contract may be made between an irrigation district and the state of Montana under 85-7-1971 through 85-7-1975 except upon:

(a) approval by a majority vote of those voting on the question at an election conducted as prescribed in 85-7-1710; or

(b) receipt of a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to lands within the district. Such petition must be addressed to the board of commissioners and must set forth the aggregate amount of money to be borrowed from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, and the purpose for which the money will be used. The petition must include an affidavit certifying the signatures to the petition and must be filed with the secretary of the board of commissioners.

(2) In an election held for approval of a district contract under this section, the voting majority must own at least 50% of the acreage included in the district.

History: En. Sec. 4, Ch. 301, L. 1987.

85-7-1975. State contracts — court approval required. (1) The board of commissioners of an irrigation district, before the making of a contract with the state of Montana under 85-7-1971 through 85-7-1975, shall commence a special proceeding in the district court. In such proceeding, the proceedings of the board and of the district leading up to the making of the contract and the validity of the terms thereof must be judicially examined and approved or disapproved.

(2) The practice and procedure for the confirmation of any step or action provided for in subsection (1) must be as nearly as possible in conformity with the practice and procedure established for the confirmation before the issuance and sale of bonds of an irrigation district. The district court may approve such proceedings in part and declare illegal or invalid other parts of the proceedings. However, insofar as possible, the court shall remedy and cure all defects in the proceedings.

History: En. Sec. 5, Ch. 301, L. 1987.

Part 20

Indebtedness, Bonds, and Bankruptcy

Part Cross-References

Payment of funds — liability of officers, 20-9-444, 20-9-445.

Insurer's investment in bonds, 33-2-815.

85-7-2001. Limitations on debt-incurring power. (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this chapter.

(2) An irrigation district may not become indebted, in any manner or for any purpose in any one year, in an amount exceeding 18.75% of the assessed valuation of the district, except as provided in subsection (4).

(3) An irrigation district may not incur indebtedness, in any manner or for any purpose in any one year, on behalf of any subdistrict in the district in an amount exceeding 18.75% of the assessed valuation of the subdistrict, except as provided in subsection (4).

(4) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for

stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may issue warrants of the district.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the 18.75% limitations of subsections (2) and (3)) an additional indebtedness not exceeding 12.5% of the assessed valuation of the district and may issue warrants of the district therefor.

(c) The limitations of subsections (1) through (3) do not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitations of subsections (1) through (3) do not apply to bonds or obligations issued to the state of Montana, the United States, or any department, agency, or instrumentality of these governments if the bonds or obligations are issued:

(i) pursuant to a loan program specifically authorized by the legislature; or

(ii) to finance in whole or in part a project authorized by the legislature.

(e) The limitations of subsections (1) through (3) do not apply to any bonds issued under this chapter pursuant to a provision that expressly supersedes the limitation.

(5) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void.

History: En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R.C.M. 1921; re-en. Sec. 7208, R.C.M. 1935; amd. Sec. 32, Ch. 234, L. 1971; amd. Sec. 25, Ch. 460, L. 1977; R.C.M. 1947, 89-1701; amd. Sec. 63, Ch. 614, L. 1981; amd. Sec. 23, Ch. 193, L. 1987; amd. Sec. 14, Ch. 439, L. 1989.

Cross-References

Sections 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, and 85-7-2032 not applicable to irrigation districts formed under Title 85, ch. 7, part 3, 85-7-304.

Failure to levy or collect tax assessment, 85-7-2137.

85-7-2002 through 85-7-2010 reserved.

85-7-2011. Exemption of irrigation district property. The bonds issued under the provisions of this part, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property belonging to any irrigation district organized under the laws of Montana and not operating for profit may not be taxed for state, county, or municipal purposes and may not be assessed costs for any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 39, Ch. 146, L. 1909; re-en. Sec. 7209, R.C.M. 1921; re-en. Sec. 7209, R.C.M. 1935; amd. Sec. 2, Ch. 492, L. 1977; R.C.M. 1947, 89-1702; amd. Sec. 2, Ch. 276, L. 1987.

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

85-7-2012. Purposes for which bonds may be issued. The board of commissioners of a district established under the provisions of Title 85, chapter 7, part 1, may authorize and issue negotiable fully registered bonds or negotiable coupon bonds of the district for the purpose of providing the necessary funds for:

(1) constructing the necessary irrigation canals and works, including drainage works, and constructing works for the generation and distribution of electricity within the district and for acquiring the property and rights necessary therefor;

(2) acquiring, by purchase or otherwise, waters, water rights, canals, reservoirs, reservoir sites, irrigation works, drainage works, and works for the generation and distribution of electricity, whether the works are constructed or partially constructed;

(3) meeting the expenses incurred incident to the construction or acquisition of the works and property, including administrative, engineering, and legal expenses;

(4) assuming, as principal or guarantor, indebtedness to the United States on account of district lands;

(5) providing a sufficient amount of money to pay the interest on all bonds of the district for a period not exceeding 5 years;

(6) redeeming or paying all or any portion of the existing indebtedness of the district, evidenced by outstanding bonds; delinquent interest coupons, overdue claims for interest, and accrued interest; or warrants, together with all delinquent and accrued interest, whether the indebtedness has or may become payable at the option of the district, by consent of the bondholders, or by any other lawful means;

(7) establishing a reserve for the payment of principal and interest on bonds of the district in an amount determined by the board to be reasonably required to market the bonds; or

(8) otherwise carrying out the provisions of the irrigation district laws.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(1); amd. Sec. 15, Ch. 439, L. 1989.

Cross-References

Amending or supplementing United States contracts — effect on indebtedness — petition not necessary, 85-7-2031, 85-7-2032.

Apportionment of costs when bonds issued, 85-7-2114.

85-7-2013. Petition requirements. (1) Bonds provided for in 85-7-2012 through 85-7-2015 may not be authorized or issued by or on behalf of any irrigation district organized under this chapter or by an irrigation district on behalf of a subdistrict located in the district and a contract may not be made with the United States as provided in 85-7-1906 except upon a petition signed by:

(a) at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within the district or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 60% in number and acreage of the holders of title or evidence of title to lands within the subdistrict; or

(b) at least 75%, in number and acreage, of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the district are situated or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 75% in number and acreage of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the subdistrict are situated.

(2) The petition must be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes of the bonds, have attached to it an affidavit verifying the signatures to the petition, and be filed with the secretary of the board. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of the district, the bonds may be authorized and issued in the manner provided for by 85-7-2019.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(2); amd. Sec. 16, Ch. 439, L. 1989.

85-7-2014. Procedure after petition filed. Upon the filing of the petition, the board of commissioners shall, by appropriate order or resolution, authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition; fix the numbers, denominations, and maturity or maturities of the bonds; specify the rate of interest on the bonds and whether payable annually or semiannually; designate the place and method of payment of the bonds and the interest on the bonds, within or outside the state of Montana; prescribe the form of the bonds; and provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district or for a levy on a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the district or subdistrict was organized and the bonds are issued or the contract is to be made, sufficient in amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(3); amd. Sec. 17, Ch. 439, L. 1989.

Cross-References

Tax or assessment to pay bonds and interest, 85-7-2101.

85-7-2015. Effect of contracting with United States. If contract is to be made with the United States as provided in 85-7-1906 and bonds are not to be deposited with the United States in connection with the contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to the contract, the commissioners may authorize bonds only for the amount needed in addition to the contract. Such order or resolution shall also provide for the confirmation proceedings in the district court as provided in 85-7-2016 through 85-7-2018.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(4).

Cross-References

Amending or supplementing United States contracts, 85-7-2031, 85-7-2032.

Apportionment of costs when bonds issued, 85-7-2114.

85-7-2016. Confirmation by district court. (1) Within 10 days after the adoption of the order or resolution mentioned in 85-7-2014, the board of commissioners shall file a petition in the district court of the judicial district where the office of the board is located to determine the validity of the proceedings relative to the issuance of the bonds and the levy of the special tax or assessment.

(2) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by giving notice. The petition shall set forth:

(a) generally, the establishment and organization of the district;

(b) a certified copy of the petition mentioned in 85-7-2013;

(c) a certified copy of the order or resolution mentioned in 85-7-2014;

(d) a prayer for the confirmation of the proceedings of the board stated in the petition and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(1), (2).

Cross-References

Objection by landowner, 85-7-2115.

85-7-2017. Hearing and procedure in the district court. (1) Upon the filing of this petition in the district court, the court shall fix the time for the hearing of the petition, which may not be less than 15 days from the date of filing the petition in the court, and shall order the clerk of the court to give notice of the filing of the petition and the date of the hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and such posting to be not less than 15 days prior to the date fixed for the hearing.

(2) The notice shall state the substance of the petition and the time and place fixed for the hearing thereon and that any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners with respect to such matters may, on or before the day fixed for the hearing of the petition, answer the petition and may appear at the hearing and contest the granting of the prayer of the petition and the entry of any order of confirmation.

(3) The provisions of Title 25 respecting the answer to a verified complaint are applicable to an answer to the petition. The persons so answering the petition are the defendants in the proceeding, and the board of commissioners is the plaintiff. Every material statement of the petition not specifically controverted by the answer shall be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer the petition

shall be considered to admit as true all the material statements thereof. The procedure in such action shall be determined by Title 25.

(4) Any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with such matters and the entry of any order of confirmation may enter his appearance in such proceedings and answer the petition and contest the granting of the prayer of the petition.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(3) thru (6).

85-7-2018. District court findings and order — appeal. (1) Upon the hearing, the district court shall find and determine whether the provisions and requirements of the preceding section have been complied with and whether notice of the filing of the petition in the district court and of the time and place of the hearing has been given for the time and in the manner prescribed and may examine and determine the regularity, legality, and validity of the proceedings preliminary and relative to the issuance of the bonds and the levy of the special tax or assessment in the petition mentioned and the legality and validity of the bonds and special tax or assessment and all actions taken by the board of commissioners in connection with such matters and shall hear all objections filed to the proceedings or any part thereof or to the issuance of the bonds or the levy of the special tax or assessment or any portion thereof. The court, in inquiring into the regularity, legality, and validity of the proceedings, shall disregard any error, omission, or other irregularity which does not affect the substantial rights of the parties to the proceedings. The court may ratify, approve, and confirm the proceedings in whole or in part and may ratify, approve, and confirm the bonds and special tax or assessment and enter its judgment accordingly.

(2) From any such judgment, an appeal may be taken to the supreme court at any time within 10 days from the entry of the judgment. The appeal shall be taken, perfected, and heard in the manner prescribed by Title 25 covering appeals from district courts to the supreme court. If no appeal is taken in time or if taken and the judgment of the district court is affirmed by the supreme court, the judgment is final. The costs of the proceedings shall be allowed or apportioned between the parties in the discretion of the court.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(7), (8).

Cross-References

Appeals to Supreme Court, Title 25, ch. 21.

85-7-2019. Refunding bonds. (1) Any irrigation district may issue refunding bonds.

(2) An irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion of the indebtedness of the district, whether represented by existing and outstanding bonds, interest coupons, or warrants, including accrued and unpaid interest on the bonds, coupons, and warrants, and whether the indebtedness is due or not due or has or may become payable at the option of the district, by consent of the

bondholders or warrant holders, or by any other legal means and whether the indebtedness is now existing or may be created, and funds in the treasury of the district are not available for the payment of the indebtedness. The refunding bonds may be issued in one or more series. The petition for the refunding bonds must be signed as required by law by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district, or by at least 60% in number and acreage of the holders of title or evidence of title to the lands within a subdistrict if the bonds to be refunded were issued by the district on behalf of the subdistrict, and addressed to the board of directors or commissioners of the district. The petition may contain the following specifications, in addition to the matters otherwise required by law:

(a) how many series of bonds shall be issued; and

(b) the terms, conditions, and liens of the bonds and the terms and conditions upon which each of the series of bonds shall be exchanged for outstanding bonds of the district if the bonds are to be exchanged and not sold.

(3) The specifications provided for in subsection (2), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district or of the subdistrict if the bonds that are the subject of the contract were issued by the district on behalf of the subdistrict. The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract.

History: (1)En. Sec. 1, Ch. 155, L. 1929; re-en. Sec. 7226.1, R.C.M. 1935; amd. Sec. 19, Ch. 315, L. 1974; Sec. 89-1712, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 155, L. 1929; re-en. Sec. 7226.2, R.C.M. 1935; amd. Sec. 29, Ch. 460, L. 1977; Sec. 89-1713, R.C.M. 1947; R.C.M. 1947, 89-1712, 89-1713; amd. Sec. 18, Ch. 439, L. 1989.

85-7-2020. Details relating to bonds. (1) All bonds issued under the provisions of this part shall run for a period not longer than 40 years from their date but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after 5 years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued may run for a longer period than 40 years from the date of issue. The bonds shall bear interest from their date until paid, payable annually or semiannually with the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. The bonds and interest coupons shall be payable at such place or places within or without the state of Montana as the board of commissioners shall prescribe.

(2) The bonds shall be of such denomination or denominations and in such form as the board of commissioners shall prescribe. An issue of bonds is defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered

consecutively. The board of commissioners shall fix the date of the bonds, or they may divide any issue into two or more divisions and fix different dates for the bonds of each division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to the bonds shall be executed by the signatures of the president and secretary. Each bond shall be signed and each interest coupon shall be executed by the president and secretary of the board of commissioners who may be in office at the date of the bond and coupons or at any time thereafter prior to the delivery of the bond to the purchaser from the district.

(4) The board of commissioners may provide for the registration of bonds in their discretion. The secretary of the board of commissioners and county treasurer shall each keep a record of the bonds sold or otherwise disposed of; their date, number, amount, maturity, or maturities; to whom sold; rate of interest; and the place or places of payment.

History: En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R.C.M. 1921; amd. Sec. 8, Ch. 157, L. 1923; re-en. Sec. 7212, R.C.M. 1935; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971; amd. Sec. 28, Ch. 460, L. 1977; R.C.M. 1947, 89-1705.

85-7-2021. Liens of bonds. (1) All bonds issued under this chapter and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, shall be a lien upon all the lands originally or at any time included in the district, or upon lands in a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the irrigation district or subdistrict was organized and the bonds were issued and for the benefit of which such contract between the district and the United States was made, except upon any lands as may at any time be included in the district or subdistrict on account of the exchange or substitution of water under the provisions of 85-7-1912; and all such lands are subject to a special tax or assessment for the payment of the interest on and principal of the bonds. All amounts to be paid to the United States under any contract between the district and the United States and the special tax or assessment constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

(2) All liens created under this section remain upon the lands until the obligations of the district for the bonds are discharged, as provided by law or by the resolution of the board of commissioners authorizing their issuance.

History: En. Sec. 43, Ch. 146, L. 1909; amd. Sec. 12, Ch. 145, L. 1915; amd. Sec. 8, Ch. 153, L. 1917; amd. Sec. 8, Ch. 116, L. 1919; re-en. Sec. 7213, R.C.M. 1921; re-en. Sec. 7213, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1973; R.C.M. 1947, 89-1706; amd. Sec. 19, Ch. 439, L. 1989.

Cross-References

Added lands to pay proportional share of bonded indebtedness, 85-7-2102.

85-7-2022. Sale of bonds. Bonds issued under the provisions of this part shall be issued, negotiated, and sold by or under the direction of the board of commissioners but shall never be sold for less than 90% of their par value and accrued interest thereon to date of delivery. The board may sell said bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the purposes for which said bonds were issued.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(1).

85-7-2023. Notice of sale of bonds. Except as provided in 85-7-2033, before making any sale the board shall, by resolution at a meeting, declare its intention to sell a specified amount of the bonds and the day and hour and place of sale. The board shall cause the resolution to be entered in the minutes and notice of the sale to be given by publication at least once a week for 3 successive calendar weeks in a newspaper in the county where the office of the board of commissioners is located, and the notice may be published in any other newspaper at the board's discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of bonds, until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds or any portion or portions thereof to the highest responsible bidder or bidders. The board may reject any or all bids. In case no award is made, the board may either readvertise the bonds or any part of the bonds for sale or sell the bonds or any part of the bonds at private sale. Coupons evidencing unearned interest must be detached and canceled.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(2); amd. Sec. 20, Ch. 439, L. 1989.

85-7-2024. Issuance of bonds for direct contract payments. Any bonds issued hereunder may, in the discretion of the board of commissioners, be issued direct in payment and satisfaction of the contract or purchase price of any irrigation works, canals, water, water rights, or other property constructed or acquired by or for the district or may be deposited with the United States as provided in 85-7-1906.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(3).

85-7-2025. Cancellation of unused bonds. Any bonds which may have been authorized but which have not been sold or deposited as security for funds advanced or to be advanced and against which the state, United States, or any other person, firm, or corporation shall have no claim to or equity in may be canceled by the board of commissioners by appropriate resolution or order. After the cancellation of said bonds, the same shall not be sold or otherwise disposed of and shall be invalid and of no effect, and the board shall have no authority to replace such canceled bonds without an authorization from the members of the district similar to that which provided for their issuance.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(4).

Cross-References

Cancellation of tax levy under certain conditions, 85-7-2105.

85-7-2026. Delivery of bonds. If bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county in which the office of the district is located. The county treasurer, after making a complete record of them, shall deliver them to the purchaser upon receipt of the purchase price. Delivery of the bonds may be made by the county treasurer to the purchaser at any place or places inside or outside this state, and the county treasurer may receive the proceeds of the sale of the bonds at the place or places of delivery.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R.C.M. 1921; amd. Sec. 10, Ch. 157, L. 1923; re-en. Sec. 7215, R.C.M. 1935; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975; R.C.M. 1947, 89-1708(part).

Cross-References

Proceeds of certain bonds, 85-7-2141.

85-7-2027. Disposition of bond proceeds. The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The proceeds shall be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds and any other surplus funds of the district or any portion thereof in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. The county treasurer shall transfer to the credit of the district and place to the credit of the fund or funds, as the board of commissioners may direct, all interest received upon investments of the district entrusted to his care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R.C.M. 1921; amd. Sec. 10, Ch. 157, L. 1923; re-en. Sec. 7215, R.C.M. 1935; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975; R.C.M. 1947, 89-1708(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 166, L. 1987.

85-7-2028 through 85-7-2030 reserved.

85-7-2031. Amending or supplementing United States contracts — effect on indebtedness. The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interests of the district, shall have the power and authority to enter into any contract with the United States supplementing or amending any original contract with the United States, said original contract having been entered into pursuant to the provisions of 85-7-1906 and 85-7-2012 through 85-7-2018; provided, that such supplementary or amendatory contract does not increase the amount of the principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract authorized under the provisions of 85-7-2012 through 85-7-2015.

History: En. Sec. 1, Ch. 71, L. 1933; re-en. Sec. 7215.1, R.C.M. 1935; R.C.M. 1947, 89-1709.

85-7-2032. Amending or supplementing United States contracts — petition not necessary. In case any supplementary or amendatory contract shall be made with the United States hereunder, no petition as required by 85-7-2012 through 85-7-2015 shall be necessary, nor shall the board of commissioners of such irrigation district be required to proceed under 85-7-2016 through 85-7-2018 for a judicial confirmation of the making of such contract and the terms thereof. It shall be sufficient in the case of a contract made with the United States hereunder for the board of commissioners of any irrigation district to authorize the execution of the same by its president and secretary by appropriate resolution adopted at any regular or special meeting of said board of commissioners.

History: En. Sec. 2, Ch. 71, L. 1933; re-en. Sec. 7215.2, R.C.M. 1935; R.C.M. 1947, 89-1710.

85-7-2033. Private sale of bonds to certain governmental entities. The district may sell bonds issued under this part to the United States, the state of Montana, or any agency, department, or instrumentality of these governments by negotiation and without public advertisement or solicitation of bids.

History: En. Sec. 7, Ch. 439, L. 1989.

85-7-2034 through 85-7-2040 reserved.

85-7-2041. Bankruptcy proceedings by irrigation districts. (1) The board of commissioners or directors of any irrigation district may, in the name and on behalf of such district, initiate and carry out proceedings for readjustment of the debts of such district, under Chapter IX of the federal Bankruptcy Act or similar provisions of any past or future federal bankruptcy act.

(2) This section is remedial in its nature and shall be liberally construed to effect its purpose, which is to permit irrigation districts to readjust their debts under federal bankruptcy acts and to confer upon the board of commissioners or directors thereof every power necessary therefor or reasonably incidental thereto.

History: En. Secs. 1, 2, Ch. 110, L. 1939; R.C.M. 1947, 89-1903(part), 89-1904.

Cross-References

Exempt property — bankruptcy proceeding, 31-2-106.

Part 21

Taxes and Assessments

85-7-2101. Tax or assessment to pay bonds and interest. (1) All bonds and the interest thereon issued under this chapter and all payments due or to become due to the United States under any contract between the district and the United States for which the bonds of the district have not been deposited with the United States as provided in 85-7-1906 must be paid by revenue derived from a special tax or assessment levied upon all the lands included in the district, or upon all lands in a subdistrict of the district if the bonds are issued by the district on behalf of the subdistrict, except upon those lands that have been included in the district or subdistrict on account of the exchange or substitution of water under the provisions of 85-7-1912. All lands in the district, or in a subdistrict if the bonds are issued on behalf of the subdistrict, at the time the bonds are issued and all lands subsequently included which are chargeable under the provisions of this chapter remain liable to be taxed and assessed for the payment of the bonds and interest and all payments due or to become due to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) The board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district mentioned in 85-7-2014, shall provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district, or in a subdistrict if the bonds are to be issued on behalf of the subdistrict, and subject to taxation and assessment, sufficient in amount to meet the interest on the bonds promptly when and as the interest accrues and to discharge the principal of the bonds at their maturity or respective maturities and to meet all payments due or to become due to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, at the times the payments by the contract become due and payable.

History: **En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(part); amd. Sec. 21, Ch. 439, L. 1989.**

Cross-References

Proceeds of certain bonds, 85-7-2141.

85-7-2102. Added lands to pay proportional share of bonded indebtedness. (1) Where a district or subdistrict is extended after the construction of works of irrigation, including drainage works, to include other irrigable lands, the included lands are chargeable with the proportion of the bonded indebtedness incurred or authorized to be incurred by any district or subdistrict and the proportion of the indebtedness incurred under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, as the district court shall order, as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845. The board of commissioners of the district shall provide for the levy of a special tax or assessment against the included lands on account of the bonds and the interest on the bonds and on account of any payments under any contracts between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) The special tax or assessment shall be levied and collected as and in the manner as the special tax assessment against the lands of the original district or subdistrict on account of the payments under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, and on account of which the bonds and the interest on the bonds is provided for, levied, and collected. Upon the extending of any district or subdistrict, the total of the bond indebtedness or indebtedness due to the United States shall be reapportioned, spread, and equalized upon and over the entire area, as provided in 85-7-2021.

History: En. Sec. 47, Ch. 146, L. 1909; amd. Sec. 15, Ch. 145, L. 1915; amd. Sec. 9, Ch. 153, L. 1917; amd. Sec. 7, Ch. 116, L. 1919; re-en. Sec. 7233, R.C.M. 1921; re-en. Sec. 7233, R.C.M. 1935; R.C.M. 1947, 89-1802; amd. Sec. 22, Ch. 439, L. 1989.

85-7-2103. All irrigable lands chargeable alike. (1) All irrigable lands in each irrigation district and all lands in each subdistrict of the district, except those lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be an administrative charge of $5 to $75 against each separately owned tract of land regardless of its size, as provided in 85-7-2104. The administrative charge is in addition to the annual tax levied under 85-7-2104.

(2) Whenever water used for the irrigation of any lands within an irrigation district or subdistrict is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation must be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in a manner determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment must be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104. The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, must be determined by the board in a manner and upon notice to the persons interested in the district or subdistrict as the board in its rules may provide.

(3) Whenever a contract has been made with the United States, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, must pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued under the reclamation laws and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States.

(4) Whenever a contract has been made with the state of Montana, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, must pay in accordance with state laws and public notices and rules issued under the laws and in compliance with any contract made by the state with the owners of the lands and in compliance with the contract between the district and the state.

(5) Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands irrigated or that can be irrigated through the built portion of the project must pay for the cost of operating that portion of the project serving them with irrigation water and must also pay the portion of the interest charges as its irrigable area bears to the irrigable area of the entire project.

(6) Whenever lands have appurtenant to the land a partial water right or partial rights in a system of irrigation other than that of the district or subdistrict, the amounts payable must be equitably apportioned.

(7) Whenever the owners of a portion of the lands within an irrigation district choose to install a gravity system to irrigate those lands, the cost of constructing the gravity system must be apportioned among and levied upon the lands irrigated by the gravity system in a manner determined to be equitable by the board. The levy must be included each year in the assessment charged under 85-7-2104.

History: En. Sec. 48, Ch. 146, L. 1909; amd. Sec. 10, Ch. 153, L. 1917; amd. Sec. 1, Ch. 158, L. 1921; re-en. Sec. 7234, R.C.M. 1921; amd. Sec. 18, Ch. 157, L. 1923; amd. Sec. 1, Ch. 136, L. 1925; re-en. Sec. 7234, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1961; amd. Sec. 31, Ch. 460, L. 1977; R.C.M. 1947, 89-1803; amd. Sec. 1, Ch. 586, L. 1979; amd. Sec. 1, Ch. 330, L. 1983; amd. Sec. 23, Ch. 439, L. 1989; amd. Sec. 1, Ch. 257, L. 1993.

85-7-2104. Annual tax levy — apportionment when tracts divided. (1) (a) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) of land in the district, that portion of the respective total amounts to be raised which the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) In the event that the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than $5.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(1), (2); amd. Sec. 2, Ch. 586, L. 1979; amd. Sec. 2, Ch. 330, L. 1983; amd. Sec. 24, Ch. 439, L. 1989; amd. Sec. 2, Ch. 257, L. 1993.

Cross-References

United States contracts — cancellation of assessment on amended contracts, 85-7-2118.

85-7-2105. Cancellation of tax levy under certain conditions. Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness. Whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds and thereafter cancels said issue of bonds as provided for in 85-7-2025, said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(3).

85-7-2106. Back assessments. Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than 3 years after the occurrence of such omission.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(4).

Cross-References

United States contracts — cancellation of assessment on amended contracts, 85-7-2118.

85-7-2107. Procedure for the determination of irrigable area. (1) For the purpose of determining the number of acres of irrigable lands in each 40-acre tract or fractional lot as designated by United States government survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, in each tract) of land in the district or subdistrict, the board of commissioners of any irrigation district established under part 1, whenever considered advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of the lands to be made, as well as a specific examination of the character of the soil of each tract. Upon completion of the survey and maps and examination, the board shall give notice that at a meeting of the board, to be held at the office of the board on a day to be fixed in the notice, the board will determine the irrigable area of each tract of land in the district or subdistrict and that it will hear and consider any objection on the part of any landowner in the district, or in a subdistrict if only the irrigable area of the subdistrict is being determined, to the determination and to adjustment of the irrigable area of the district or subdistrict or of any lands within any tract or subdivision of the district or subdistrict. It is not necessary to describe the tracts in the notice. The notice must be given by publication once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the office of the board is located, and whenever lands of any irrigation district or subdistrict lie in more than one county, the notice must also be published in a newspaper or newspapers of general circulation in each county. The last publication of the notice must be at least 5 days prior to the date fixed for the meeting.

(2) At the meeting, the board shall determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district or subdistrict and shall hear all persons interested who may appear and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until the determination of irrigable area is completed. The board shall hear and receive all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon determination, the irrigable area fixed is the acreage upon which any special tax or assessment must be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in the district or subdistrict, except as otherwise provided by law.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(part); amd. Sec. 25, Ch. 439, L. 1989.

Cross-References

Legal holidays and business days, 1-1-216.

85-7-2108. Taxes to be lien upon land. Any special tax or assessment levied for any purpose is a lien upon the entire 40-acre tract or fractional lot as designated by United States government survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, against each such tract) of land in the district or subdistrict of which the irrigable area forms a part, and the lien shall attach to the entire tract as of January 1 in the year in which the special tax or assessment is levied.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(part); amd. Sec. 26, Ch. 439, L. 1989.

Cross-References

State tax liens, Title 15, ch. 16, part 4.

Liens, Title 71, ch. 3.

85-7-2109. List of all lands in district or subdistrict to be prepared. Upon completing the determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each tract or subdivision and shall prepare a list of all lands in the district or subdistrict. The list must contain an accurate description of each 40-acre tract or fractional lot as designated by United States government survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then of each such tract) of land in the district or subdistrict, the total acreage and the number of irrigable acres as fixed and determined, and the name of the owner or holder of title or evidence of title, ascertained as provided in 85-7-101 and 85-7-102. This list, when completed and adopted, must be filed in the office of the board and shall remain there for public inspection. A certified copy of the resolution and list must be filed with the county clerk and recorder of each county in which any portion of the lands in the district is situated. The lands not situated in the county in which the copy is filed must be omitted from the copy.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(3); amd. Sec. 27, Ch. 439, L. 1989.

85-7-2110. Nonirrigable lands not to be taxed. A special tax or assessment may not be levied against any 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever lands are owned in less than 40-acre tracts or in less than the platted lot, against each such tract) found by the board of commissioners to contain no irrigable land. A lien created after the order of determination may not attach to any nonirrigable tract, nor may the owner or owners of any nonirrigable tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909 or any amendment thereof or act supplementary thereto, after the making of the order, unless their land or a portion of their land is found by the board to contain an area irrigable from the works or proposed works of the district or subdistrict.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(4); amd. Sec. 28, Ch. 439, L. 1989.

85-7-2111. Refunds and cancellation of excess taxes. Upon the determination provided for in 85-7-2107 through 85-7-2113, the board of commissioners may refund any taxes paid or cancel any unpaid taxes or assessments levied upon an acreage in excess of that so fixed by the order of determination and whenever necessary may issue warrants therefor.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(5).**

85-7-2112. Confirmation of board actions by district court. (1) Within 60 days after the resolution adopting the list, the board of commissioners may petition the district court for confirmation of its acts in determining the irrigable area and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in the district or the majority in number and acreage of the holders of title or evidence of title in the subdistrict if only the irrigable area of the subdistrict is to be reviewed, determined as provided in 85-7-101 and 85-7-102, may likewise within the 60-day period petition the district court for review of the actions of the board. However, one of these proceedings, if prosecuted to determination, is exclusive of the other. The court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court or taxes previously levied upon any area shown to be excessive to be refunded or canceled.

(2) The provisions of 85-7-1808 through 85-7-1810 regarding the procedure as well as the right and time to appeal apply to any proceeding instituted pursuant to this section, provided nothing in this section affects or impairs the lien of any bonds issued by the district. If confirmation proceedings are held and a certified copy of the order of confirmation is filed with the county clerk and recorder of the county in which any portion of the lands is situated, it is not necessary to file in the office the certified copy of the resolution and order of the board or of the list provided for in this section.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(6), (7); amd. Sec. 29, Ch. 439, L. 1989.**

85-7-2113. Effect of federal involvement. Whenever districts have been established in order to cooperate with the United States under the federal reclamation laws or under any act of congress which permits the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, the determination of the irrigable area of the lands in the district may be made by the board of commissioners in the manner provided in 85-7-2107 through 85-7-2112 or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs of the proposed works or improvements provided for in 85-7-2114 through 85-7-2116 may not be had.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(8).**

85-7-2114. Apportionment of costs when bonds issued. (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of part 1 has been filed as provided in 85-7-2012 through 85-7-2015, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, each such tract) of land in the district or of land in a subdistrict if the bonds are to be issued on behalf of the subdistrict, and cause a careful topographical survey and map to be made in the manner provided for in 85-7-2107. Upon the examination, the board shall determine the number of irrigable acres in each tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts within the district or subdistrict according to the irrigable area in each of the tracts or subdivisions, so that each irrigable acre is required to bear the same burden of such costs as each other irrigable acre in the district or subdistrict, except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds is a lien upon the entire tract of which the irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each tract so determined may not be diminished but may be increased during the term for which the bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district or subdistrict has already been had or a topographical survey or maps thereof prepared or a court confirmation of prior proceedings had, in part or in full, the board may, in its discretion, adopt all or portions of the prior proceedings and need not cause an additional survey or maps or examination of any of the tracts to be made or redetermine the irrigable area of any tract.

(3) The board shall make the determination after the hearing and shall fix the total acreage and the irrigable acreage and shall prepare a list of the irrigable area for filing, and the proceedings of the board in connection with the determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, shall conform to the requirements set forth in 85-7-2107 through 85-7-2113. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue. The tax levied is a lien upon the entire tract of which the irrigable area forms a part. If any landowner in the district or subdistrict appears before the board at that time and pays in cash the amount fixed against his land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, his land must be excluded from the lien of the bond issue and the amount of bonds intended to be issued shall be reduced by the amount of the payment. Any person interested who fails to appear before the board at the meeting may not thereafter contest the proceedings of the board or any part thereof, except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(1) thru (3); amd. Sec. 30, Ch. 439, L. 1989.

85-7-2115. Objection by landowner. In case any landowner makes objection to the proceedings of the board in determining the irrigable area in his own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district or subdistrict for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings must be regarded as appealed to the district court and shall, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 85-7-2016 through 85-7-2018, and when confirmed, the order overruling the objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement to each tract shall become final, binding, and conclusive upon the landowner and upon the district, unless appealed from as provided in 85-7-2018.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(4); amd. Sec. 31, Ch. 439, L. 1989.

85-7-2116. Restrictions on reduction of taxable acreage. Whenever the irrigable area of the lands in any irrigation district or subdistrict has been determined and confirmed, no owner or holder of title or evidence of title to lands in the district or subdistrict, during the period when any bonds are issued and outstanding, may have the taxable acreage of his lands fixed or adjudicated in the manner provided by 85-7-1841 through 85-7-1845 in a manner or to an extent as to reduce the acreage subject to the payment of the bonds or interest or in a manner as to affect the security of the bonds or interest on the bonds.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(5); amd. Sec. 32, Ch. 439, L. 1989.

85-7-2117. Conclusiveness of tax or assessment. In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake, shall be conclusive and final, except as herein otherwise provided.

History: En. Sec. 50, Ch. 146, L. 1909; re-en. Sec. 7237, R.C.M. 1921; re-en. Sec. 7237, R.C.M. 1935; R.C.M. 1947, 89-1809.

85-7-2118. United States contracts — cancellation of assessment on amended contracts. In any case where the board of commissioners of any irrigation district has made a levy or assessment under the provisions of 85-7-2104 through 85-7-2106 and included therein any amount due the United States under any contract or agreement for the purchase of any irrigation works or for the operation and maintenance of any irrigation works, while acting as fiscal agent for the United States, or under any authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, as provided in 85-7-1906, and the United States shall thereafter modify or supplement such contract or agreement so as to eliminate certain charges under said contract or agreement or so as to make such charges due at a later date or dates than originally provided in said contract or agreement, said board of commissioners are empowered to direct the cancellation of said levy or assessment theretofore made to raise funds to pay the United States that are under such modification or supplemental contract or agreement made due and payable at a later date or dates.

History: En. Sec. 1, Ch. 103, L. 1923; re-en. Sec. 7235.3, R.C.M. 1935; R.C.M. 1947, 89-1807.

85-7-2119. United States contracts — assessments where district partly outside state. Where a contract has been entered into or may be hereafter entered into between an irrigation district and the United States, the board of commissioners shall have the power to levy assessments against all of the land within the district for any and all of the purposes hereinbefore enumerated and, in addition thereto, the power to levy assessments against any or all of the lands in said district in compliance with such contract. Where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the mutual construction of works, operation and maintenance of works, drainage, and other matters and things pertaining to said works and shall have the power to levy assessments against any or all lands within the district necessary to carry out the provisions of such contract.

History: En. Sec. 1, Ch. 4, Ex. L. 1921; re-en. Sec. 7236, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1923; re-en. Sec. 7236, R.C.M. 1935; R.C.M. 1947, 89-1808.

85-7-2120 through 85-7-2130 reserved.

85-7-2131. Funds for payment of each series of bonds to be kept distinct. When more than one series of bonds shall have been issued by a district, the funds for the payment of each series shall be kept separate and distinct. When contract is made between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as provided in 85-7-1906, the funds for the payment to be made under any such contract shall be kept separate and distinct.

History: En. Sec. 52, Ch. 146, L. 1909; amd. Sec. 17, Ch. 145, L. 1915; re-en. Sec. 7238, R.C.M. 1921; re-en. Sec. 7238, R.C.M. 1935; R.C.M. 1947, 89-1810.

85-7-2132. Sinking fund for straight maturity bonds. When straight maturity bonds are issued, the board of commissioners of the district shall create and maintain a sinking fund sufficient to pay and discharge the bonds at maturity. If the bonds are issued for 20 years or less, there shall be annually levied for the sinking fund a special tax or assessment sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if the bonds are issued for more than 20 years, it is not necessary to levy a special tax or assessment for sinking fund until the 20th year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(part).

Cross-References

Relations with United States, 85-7-1906.

85-7-2133. Role of the county officers in collection of tax or assessment. (1) A certified copy of such resolution shall be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment therein provided for shall be levied and collected as prescribed and when so collected shall, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest thereon so long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States under a contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, the special fund shall be known as the United States contract fund.

(2) The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except payments on bonds and interest for which no order is necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners who may invest the same in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. Where moneys of a district in the United States contract fund established pursuant to subsection (1) are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess or any part thereof may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board and shall bear the official seal of the district.

History: (1)En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; Sec. 89-1801, R.C.M. 1947; (2)En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R.C.M. 1921; re-en. Sec. 7239, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1971; amd. Sec. 34, Ch. 460, L. 1977; Sec. 89-1811, R.C.M. 1947; R.C.M. 1947, 89-1801(3), 89-1811; amd. Sec. 3, Ch. 166, L. 1987.

85-7-2134. Levy of taxes and assessments by county commissioners. If for any reason a levy of taxes or assessments shall not be made for any irrigation district in any year by the board of commissioners of such district within the time provided by 85-7-2104, the board of county commissioners of the county in which such district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of said district, make the levy which should have been made by board of commissioners of such district, and furnish the county clerk of such county with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136, and such levy so made shall have the same force and effect as though made by the board of commissioners of such district. This section shall apply only to irrigation districts having a bonded indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users.

History: En. Sec. 1, Ch. 89, L. 1931; re-en. Sec. 7240.1, R.C.M. 1935; R.C.M. 1947, 89-1813.

Cross-References

County taxation, Title 7, ch. 6, part 25.

85-7-2135. Transmission of funds from other counties. Where the lands of any district lie in more than one county, the district taxes or assessments collected in counties in which the principal office is not located shall be transmitted, on or before the 10th day of each month except June and December, by the county treasurer of such county to the county treasurer of the county wherein the office of the district is located.

History: En. Sec. 55, Ch. 146, L. 1909; re-en. Sec. 7241, R.C.M. 1921; re-en. Sec. 7241, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1961; R.C.M. 1947, 89-1814; amd. Sec. 1, Ch. 252, L. 1987.

85-7-2136. Collection of taxes or assessment. (1) On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must issue, showing exactly what assessments have been paid, and must show that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is paid as permitted in this section and the receipt for the payment presented to the county treasurer at the time the taxes are paid, or paid at the same time.

History: (1)En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R.C.M. 1921; re-en. Sec. 7240, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973; Sec. 89-1812, R.C.M. 1947 (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-1812; amd. Sec. 4, Ch. 584, L. 1989; amd. Sec. 1, Ch. 485, L. 1993; amd. Sec. 154, Ch. 27, Sp. L. November 1993.

Cross-References

Proceeds of certain bonds, 85-7-2141.

85-7-2137. Failure to levy or collect tax or assessment. In the event that for any reason a special tax or assessment provided for cannot or may not be levied and collected in time to meet any interest falling due on any bonds issued, the board of commissioners shall provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated or by warrants drawn against the next district tax or assessment levied or to be levied. These warrants shall be in addition to those mentioned in 85-7-2001.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(4).

85-7-2138. Surplus in construction fund. In the event of any money remaining in the construction fund after the completion of any district project, the same may be transferred to an appropriate fund for the redemption of the outstanding bonds of the district.

History: En. Sec. 62, Ch. 146, L. 1909; re-en. Sec. 7257, R.C.M. 1921; re-en. Sec. 7257, R.C.M. 1935; R.C.M. 1947, 89-2104.

85-7-2139. Transfer of funds. The board of commissioners shall have power to transfer money from any one fund to any other fund, except that no money shall be drawn from the sinking fund or construction fund, except as specifically provided in this chapter; provided, that no money in the United States contract fund shall ever be diverted to any other fund.

History: En. Sec. 63, Ch. 146, L. 1909; amd. Sec. 20, Ch. 145, L. 1915; re-en. Sec. 7258, R.C.M. 1921; re-en. Sec. 7258, R.C.M. 1935; R.C.M. 1947, 89-2105.

85-7-2140. Investment of funds. The board of commissioners shall direct the investment of the funds in any bond sinking fund in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations, whenever in their judgment the investment may be to the best interest of the district. All such investments shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(5); amd. Sec. 4, Ch. 166, L. 1987.

85-7-2141. Proceeds of certain bonds. The provisions of 85-7-2026, 85-7-2027, 85-7-2101, 85-7-2132, 85-7-2133(1), 85-7-2137, and 85-7-2140, with reference to the disposition of the proceeds of bonds mentioned therein, the levy and collection of a special tax or assessment for the payment of the principal and interest of such bonds, the creation of a sinking fund, the issuance of warrants for the payment of interest, and the investment of the funds in any sinking fund created, shall apply to the bonds issued under Chapter 252, Laws of 1921. All other provisions of Chapter 146, Laws of 1909, as amended, with reference to the levy and collection of a special tax and assessment, not inconsistent or in conflict with the provisions of Chapter 252, Laws of 1921, shall apply to the bonds issued under Chapter 252, Laws of 1921, the same as to the bonds mentioned therein.

History: En. Sec. 6, Ch. 252, L. 1921; re-en. Sec. 7231, R.C.M. 1921; re-en. Sec. 7231, R.C.M. 1935; R.C.M. 1947, 89-1714.

85-7-2142. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any irrigation district of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the irrigation district which they represent if they shall fail to perform any such duties so required by law, as in this section hereby specified, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund, as herein specified, for any purpose other than that permitted by law shall be jointly and severally liable to the irrigation district to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: En. Secs. 1, 2, Ch. 5, L. 1923; re-en. Secs. 463.1, 463.2, R.C.M. 1935; R.C.M. 1947, 59-534(part), 59-535(part).

Cross-References

Officer's liability with respect to bond funds, 7-7-121.

85-7-2143. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 85-7-2142. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

Cross-References

County Attorney to be legal advisor of county and other subdivisions, 7-4-2711.

85-7-2144 through 85-7-2150 reserved.

85-7-2151. Delinquent sale and redemption. Delinquent sales of land for unpaid taxes or assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situated. The right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes.

History: En. Sec. 56, Ch. 146, L. 1909; amd. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7242, R.C.M. 1921; re-en. Sec. 7242, R.C.M. 1935; R.C.M. 1947, 89-1815.

Cross-References

Tax sales, Title 15, ch. 17.

85-7-2152. Proceeds of sale. Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of such district is sold by the treasurer of the county where such land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which such lands are sold, the county treasurer making such sale or sales shall place to the credit of the proper funds of such irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county where they are situated pursuant to the provisions of 15-17-214, the county treasurer of the county must, upon the issuance of the certificate of tax sale to the county, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises so sold, inclusive of the interest and penalty thereon, which certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises so struck off to the county at the tax sale, and after the issuance of the certificate, the sum named therein and the taxes and assessments of the district evidenced thereby shall bear interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described therein in the manner provided for by law, and duplicates of such certificates so issued to the irrigation district shall be filed in the office of the county clerk and county treasurer of the county with the certificate of tax sale of the lands and premises.

History: **En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7243, R.C.M. 1921; re-en. Sec. 7243, R.C.M. 1935; amd. Sec. 35, Ch. 460, L. 1977; R.C.M. 1947, 89-1816; amd. Sec. 53, Ch. 587, L. 1987.**

85-7-2153. Assignment of debenture certificates. The certificates provided for by the preceding section hereof shall be assignable and may be sold or negotiated by the board of commissioners of said irrigation district and the proceeds thereof delivered to and deposited with the county treasurer of said county for proper credit to the respective funds of said irrigation district. Upon the sale, negotiation, or transfer thereof, as provided for above, the lien of said irrigation district shall vest in the purchaser thereof and is only divested by the payment to the purchaser or the county treasurer of said county, for his use, of the sum for which said certificate is issued and 1% additional for each month that elapses from the date of such certificate until redeemed as hereinafter provided for.

History: **En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7244, R.C.M. 1921; re-en. Sec. 7244, R.C.M. 1935; R.C.M. 1947, 89-1817.**

85-7-2154. Redemption of lands sold. Upon the redemption of any lands so sold for taxes in the manner provided for by Title 15, chapter 18, the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates the sums for which the same were issued, with interest as therein provided to the date of the redemption of said lands.

History: **En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7245, R.C.M. 1921; re-en. Sec. 7245, R.C.M. 1935; R.C.M. 1947, 89-1818; amd. Sec. 54, Ch. 587, L. 1987.**

85-7-2155. Sale by county commissioners when land not redeemed. When the lands and premises so sold for taxes and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed within the time provided for by 15-18-111, the board of county commissioners of the county, within 3 months thereafter, shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued, with interest as provided for to the date of the sale of the lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued may, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of the irrigation district represented by the certificate, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same.

History: **En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7246, R.C.M. 1921; re-en. Sec. 7246, R.C.M. 1935; amd. Sec. 36, Ch. 460, L. 1977; R.C.M. 1947, 89-1819; amd. Sec. 55, Ch. 587, L. 1987.**

85-7-2156. Proceedings where land struck off to county and not redeemed. In case the property so assessed for irrigation district purposes is struck off to the county, as provided for by law, and certificates of the taxes and assessments of said irrigation district issued thereon, as hereinbefore provided for, and the said lands and premises be not redeemed before the next annual assessment for irrigation purposes shall become delinquent thereon, then and in that event, like certificates for each year's irrigation district taxes and assessments shall be issued against said land and shall be included in and satisfied by any redemption thereof, with interest as hereinbefore provided for, and shall in like manner be paid from the proceeds of sale of said lands by the board of county commissioners, if the same be not redeemed as provided for by law.

History: **En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7247, R.C.M. 1921; re-en. Sec. 7247, R.C.M. 1935; R.C.M. 1947, 89-1820; amd. Sec. 56, Ch. 587, L. 1987.**

85-7-2157. Purchase of lands by district — revolving fund, credits, and expenditures. (1) At all sales of all lands for delinquent taxes where all or a portion of such delinquent taxes are taxes and assessments levied and assessed by any irrigation district against the lands to be sold, the commissioners of such irrigation district, if there be no other bidder for such land at such tax sale, may bid therefor the total amount of all delinquent taxes and assessments, penalty, and interest against such land, and thereupon the county treasurer shall strike off said lands to such irrigation district and issue certificates of tax sale to said irrigation district the same as such certificates of tax sales are issued to other purchasers. For the purpose of paying such taxes, assessments, interest, and penalties, the commissioners of such irrigation district shall have the power and authority to create by resolution a fund to be known and designated as the revolving fund for the purchase of tax certificates and titles and to provide funds for such revolving fund by levy, bond issue, or otherwise. The district may pay such taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against such revolving fund, provided that there shall be sufficient money in such fund to pay same in full upon demand.

(2) When taxes are paid by the district as provided in this part, the county treasurer shall distribute that portion of said tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. However, if the board of commissioners of the irrigation district shall file with the county treasurer a certified copy of resolution passed by such commissioners requesting nondistribution by the county treasurer of the portion of the tax belonging to the district, the county treasurer shall not distribute that portion of said tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment, but the total amount due the irrigation district shall be credited by him to the revolving fund above specified. In such event, at the time of the sale by the district of the tax sale certificate or of the property obtained through such certificate, such funds as are realized from such sale must be deposited with the county treasurer, together with the rentals received from the property, and he shall credit the proceeds of such redemption sale or rental pro rata to the several funds of the district in accordance with the original levy or assessment.

(3) At the time of redemption or of the sale by the district of the tax sale certificate or of the property obtained through such certificate, such funds as are realized must be deposited with the county treasurer, together with rentals received from the property. He shall credit the proceeds of such redemption, sale, or rentals to the above specified revolving fund to such extent as may be required, with the credit provided for above, to reimburse said revolving fund in full, if the sum realized permits, the overplus, if any, to be credited to the several funds of the district in accordance with the original levy and assessment. No expenditures shall be made from the revolving fund except for the purpose as herein specified, and when, by resolution of the board of irrigation district commissioners, such fund shall be deemed inactive, the balance remaining in said fund shall be transferred to a sinking fund to be applied upon any indebtedness which may have been incurred by the district by reason of the creation of such revolving fund, if any there may be.

History: **En. Sec. 1, Ch. 89, L. 1925; amd. Sec. 1, Ch. 57, L. 1929; re-en. Sec. 7248.1, R.C.M. 1935; R.C.M. 1947, 89-1822.**

Cross-References

Powers of District Commissioners to acquire and manage tax sale lands, 85-7-2162.

Application of 85-7-2157, 85-7-2164.

85-7-2158. Purchase of lands by district — tax sale certificates and payment. (1) Any irrigation district may:

(a) purchase the certificate of tax sale issued to any county for lands sold at tax sale against which any of its taxes and assessments are delinquent; or

(b) if deed therefor has issued to the county, purchase such lands from the county by paying all state, county, city, school district, and other delinquent taxes together with penalty, interest, and costs of publication and sale to the county treasurer of the county making the sale.

(2) Such payment shall be made by the commissioners of such district issuing and delivering to the county treasurer a warrant drawn against the revolving fund of said district; provided there shall be sufficient money in said

fund to pay same in full upon demand. Thereupon, such treasurer shall assign such certificate of tax sale to such irrigation district as in the case of the purchase thereof by any other person, or the commissioners of the county shall convey such lands to said district in case tax deed therefor has been issued to the county.

History: En. Sec. 2, Ch. 89, L. 1925; re-en. Sec. 7248.2, R.C.M. 1935; R.C.M. 1947, 89-1823.

Cross-References

School district inclusive of community college district, 20-15-403.

85-7-2159. Issuance of tax deed. When there has been no redemption of the lands sold at tax sale to an irrigation district or any other person or of the lands struck off to the county for which certificate of sale has been assigned to an irrigation district or any other person in the manner and within the time allowed for the redemption of lands from tax sales, the county treasurer of the county within which the lands are situated shall issue a tax deed for the lands to the irrigation district or other holder of certificate of sale.

History: En. Sec. 3, Ch. 89, L. 1925; re-en. Sec. 7248.3, R.C.M. 1935; R.C.M. 1947, 89-1824; amd. Sec. 305, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 near middle, after "within the time allowed", deleted "by 85-7-2163"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Issuing tax deed, Title 15, ch. 18, part 2.

85-7-2160. Sale by district of purchased tax-deed lands. After the issuance of any such tax deeds to an irrigation district, the commissioners of such district shall have power to sell and convey the lands so purchased, or any part thereof, at either public or private sale whether or not the price received therefor equals the amount of delinquent taxes, assessments, penalties, interest, and costs against said lands. If such lands be offered for sale at public sale, such commissioners may reject any and all bids thereon. No such lands shall be sold by said commissioners at private sale until the same shall have been offered for sale at public sale, and no such lands shall be sold at private sale at a price less than the highest price bid therefor at the public sale at which such lands are offered. If no bid is received for such lands when the same are offered for sale at public sale, the commissioners may then sell the same in such manner and for such price as in their judgment they shall deem to be for the best interests of said district.

History: En. Sec. 4, Ch. 89, L. 1925; re-en. Sec. 7248.4, R.C.M. 1935; R.C.M. 1947, 89-1825.

85-7-2161. Action to quiet title in district. If any such lands are conveyed to any irrigation district, it may maintain an action to quiet title to said lands in said district in the manner provided by the laws of Montana for quieting title to real property.

History: En. Sec. 5, Ch. 89, L. 1925; re-en. Sec. 7248.5, R.C.M. 1935; R.C.M. 1947, 89-1826.

Cross-References

Quiet title — tax deed property, Title 15, ch. 18, part 4.

85-7-2162. Powers of district commissioners to acquire and manage tax sale lands. (1) In addition to the powers heretofore granted to irrigation districts, the commissioners of every irrigation district established and organized under and by virtue of the laws of the state of Montana shall have power to:

(a) purchase lands within their respective districts heretofore sold and conveyed to the county for nonpayment of taxes and assessments, purchase certificates of tax sales of such land when struck off to the county, take title thereto for their district;

(b) own, manage, operate, lease, sell, and dispose of the same for the use and benefit of their respective districts upon such terms as shall, in the judgment of the board of commissioners of such irrigation district, be deemed most advantageous to the district;

(c) sue and be sued in reference to said lands in the name of their respective irrigation districts; commence, maintain, and prosecute suits to quiet title to said lands and any and all other suits in equity or actions at law with reference thereto, the same as might be done by any other individual or corporate owners of such lands; and

(d) do any and all other acts or things necessary or beneficial for their respective districts in connection with such lands.

(2) Such lands shall be first offered for sale at public sale and the commissioners may reject any and all bids thereon, if in their judgment such bids are insufficient. No such lands shall be sold at private sale at a price less than the highest bid therefor at the public sale at which such lands are offered for sale, and if no bid is received for said land when said land is offered at public sale, the commissioners may then sell the same in such manner and at such price and upon such terms as in their judgment shall be for the best interests of said district.

(3) The board of commissioners of any irrigation district shall be and they are hereby authorized and empowered to do any and all things necessary to carry out the provisions and intentions of 85-7-2157 through 85-7-2164.

History: En. Sec. 6, Ch. 89, L. 1925; amd. Sec. 1, Ch. 36, L. 1933; re-en. Sec. 7248.6, R.C.M. 1935; R.C.M. 1947, 89-1827.

85-7-2163. Granting of tax deed. The holder of the certificate of tax sale must be granted a tax deed by the county treasurer in the manner and form provided by Title 15, chapter 18.

History: En. Sec. 7, Ch. 89, L. 1925; re-en. Sec. 7248.7, R.C.M. 1935; R.C.M. 1947, 89-1828; amd. Sec. 57, Ch. 587, L. 1987.

85-7-2164. Application of certain sections. Sections 85-7-2157 through 85-7-2163 shall apply only when or after said irrigation district shall have commenced delivery of water to any lands included in such irrigation district.

History: En. Sec. 8, Ch. 89, L. 1925; re-en. Sec. 7248.8, R.C.M. 1935; R.C.M. 1947, 89-1829.

85-7-2165. Partitioning interest in tax-deed lands in certain districts. (1) In any case where an irrigation district established under the law of this state has incurred a bonded indebtedness or other indebtedness but has not constructed or purchased any irrigation plant or system for the irrigation of land in the district and more than 10 years have expired since the date of the creation of the irrigation district, the board of commissioners of such irrigation district and also the board of county commissioners of the county in which the lands of the district or any part thereof are situated shall have power to enter into an agreement, on behalf of such irrigation district and such county, for the partitioning of the respective interests of the irrigation district and the county in lands to which the county has taken tax deed and to make all necessary conveyances and assignments to carry out such agreement in such manner that the respective interests of the county and the irrigation district shall be fully segregated and thereafter separately owned and controlled.

(2) The board of commissioners of such irrigation district shall have power to sell and convey such lands and interests so acquired by the irrigation district or any part thereof and any other property or assets which such irrigation district may hold, at either public or private sale, or transfer such lands or interests in lands or other assets to creditors of the district in payment of the indebtedness of such irrigation district, upon such terms as shall, in the judgment of the board of irrigation district commissioners, be deemed most advantageous to the irrigation district. The board of commissioners of such irrigation district and the board of county commissioners of the county in which the lands of such irrigation district or any part thereof are situated shall be and they are hereby authorized and empowered to do any and all things necessary to carry out the provisions and intentions of this section, the purpose of which is to enable such irrigation district to dispose of its assets in settlement of its liabilities and to be dissolved.

History: En. Sec. 1, Ch. 207, L. 1943; R.C.M. 1947, 89-1830.

85-7-2166. Liability of county treasurers. (1) The county treasurer to whom district funds or securities are entrusted shall be liable on his bond for the safekeeping of said funds and securities. Such funds shall be properly divided into the respective funds for which district taxes or assessments were levied; that is to say, United States contract fund; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund; and general fund. The construction fund shall be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident thereto, as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident thereto. All warrants issued for preliminary and organization expenses and all administrative expenses shall be paid from the general fund.

(2) The county treasurer is authorized to receive, in lieu of cash, matured bonds and/or matured coupons or interest coupons maturing within the year in payment of any tax or assessment levied for the payment of bonds or interest on bonds. The county treasurer at any time, upon the order of the board of commissioners of the district, shall turn over to said board any bonds or securities held by him and required to be delivered to said board in accordance with the provisions of this chapter. All bonds and interest coupons so received or otherwise paid and all bonds of the district upon the payment thereof shall be immediately canceled and retained by the county treasurer as vouchers.

History: En. Sec. 57, Ch. 146, L. 1909; amd. Sec. 19, Ch. 145, L. 1915; re-en. Sec. 7249, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1933; re-en. Sec. 7249, R.C.M. 1935; R.C.M. 1947, 89-1831.

Cross-References

Extent of sureties' liability — when less than full, 2-9-511.

Office of County Treasurer, Title 7, ch. 6, part 21.

85-7-2167. Sale or transfer of lands. Where any lands in any district are sold or transferred, either by deed, mortgage, foreclosure sale, or otherwise, such sale or transfer shall include the water belonging to and appurtenant to the land, whether or not the same is expressly stated in the deed, instrument of transfer, or decree, and such land shall be liable to special tax or assessment the same as if such sale or transfer had not been made.

History: En. Sec. 58, Ch. 146, L. 1909; re-en. Sec. 7250, R.C.M. 1921; re-en. Sec. 7250, R.C.M. 1935; R.C.M. 1947, 89-1832.

Part 22
Miscellaneous Provisions

85-7-2201. Limitation on actions attacking decrees. No suit, action, or proceeding shall be brought in any court in this state attacking the validity or regularity of any order or decree of the court purporting to establish a district hereunder or correcting or amending any order or decree creating a district after the expiration of 6 months from the date of the recording of the order establishing the district or the order correcting or amending the same. Nothing contained in this section shall be deemed or construed to confirm, approve, or validate any warrant issued, disbursement made, or contract entered into for the expenditure of money by the board of commissioners on behalf of any district.

History: En. Sec. 2, Ch. 54, L. 1923; re-en. Sec. 7231.1, R.C.M. 1935; R.C.M. 1947, 89-1715(part).

85-7-2202. Consolidation of appeals. If more than one appeal shall be pending at the same time concerning similar contests provided for in this chapter, such appeals shall be consolidated and tried together.

History: En. Sec. 59, Ch. 146, L. 1909; re-en. Sec. 7254, R.C.M. 1921; re-en. Sec. 7254, R.C.M. 1935; R.C.M. 1947, 89-2101.

85-7-2203. Nonsubstantial errors disregarded — rules of practice — costs. The court hearing any of the contests or proceedings herein provided for shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by Title 25 which are not inconsistent with the provisions of this chapter are applicable to all actions or proceedings herein provided for. The costs of any such hearing or contest may be allowed and apportioned between the parties or taxed to the losing parties, in the discretion of the court.

History: En. Sec. 60, Ch. 146, L. 1909; re-en. Sec. 7255, R.C.M. 1921; re-en. Sec. 7255, R.C.M. 1935; R.C.M. 1947, 89-2102.

85-7-2204. Written consent of owners — acknowledgment and recording requirements. Whenever any written consent is required to be given by or obtained from the owner or owners of any lands by any of the provisions of any of the sections of this chapter, such written consent must be acknowledged before some officer authorized to take acknowledgments and shall be filed and recorded in the office of the clerk and recorder of the county in which such lands are situated, and a certified copy thereof must be filed in the office of the clerk of the court in the county in which the proceedings for the organization of such district were instituted. The provisions of this section shall not apply to any petition provided for by this chapter, and all such petitions may be signed in any number of original parts with the same effect as though all signatures had been affixed to one instrument.

History: En. Sec. 64, Ch. 146, L. 1909; re-en. Sec. 7259, R.C.M. 1921; re-en. Sec. 7259, R.C.M. 1935; R.C.M. 1947, 89-2106; amd. Sec. 6, Ch. 326, L. 1979.

85-7-2205. Definition of irrigable land. As used in this chapter, "irrigable land" means:

(1) land that can receive irrigation water and is classified as irrigable by the district or the United States government; or

(2) land decreed as taxable acreage under 85-7-1841 through 85-7-1845.

History: En. Sec. 5, Ch. 584, L. 1989.

85-7-2206 through 85-7-2210 reserved.

85-7-2211. Irrigation ditches — duties relating to safety. An irrigation district or private person or entity owning or operating irrigation ditches must keep irrigation ditches in good general repair and condition, but for the purpose of protecting persons and property from injury or damage has no duty to:

(1) erect fences;

(2) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or

(3) prevent access to ditches by persons or animals.

History: En. Sec. 1, Ch. 570, L. 1987.

85-7-2212. Irrigation ditches — nonliabilities. An irrigation district or private person or entity owning or operating irrigation ditches is not liable for:

(1) personal injury or property damage resulting from floodwaters caused by rainfall or other weather conditions or acts of nature;

(2) personal injury or property damage occurring on another's land and caused by water seepage that existed or began before the injured person first arrived on or obtained an interest in the land or before the damaged property was first placed on the land, if the seepage does not carry toxic chemicals onto the land;

(3) injury to a person or property while, without authorization of the district or private person or entity, the person or property is on land or water controlled by the district or private person or entity, unless the irrigation district or private person or entity engaged in willful or wanton misconduct; or

(4) death from a drowning, unless the irrigation district or private person or entity was grossly negligent or engaged in willful or wanton misconduct.

History: En. Sec. 2, Ch. 570, L. 1987.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

CHAPTER 8

DRAINAGE DISTRICTS

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Part 1
Creation of Districts

85-8-101. Petition for creation of district. (1) Whenever a majority of the owners of lands within any district of land who shall represent one-third in area of the land within said district to be reclaimed or benefited or whenever the owners of more than one-half of the lands within such district desire to construct one or more drains, ditches, levees, waste ditches, or other works across the lands of others or to straighten, widen, deepen, or otherwise alter any natural stream or watercourse not navigable, for the promotion of the public health or welfare and the drainage of the lands and removal of surface waters therefrom; or desire to maintain and keep in repair any such drain, ditch, or levee heretofore constructed under any law of this state, such owners may file, in the district court of any county in which the lands or any part of them shall lie, a petition setting forth:

(a) the proposed name of the drainage district;

(b) the necessity of the proposed work;

(c) a general description of the proposed starting points, routes, and termini of the proposed drain, ditches, and levees;

(d) a general description of the lands proposed to be included in the district;

(e) the names of the owners of all lands in the district, when known.

(2) If the purpose of the petitioners is the enlargement, repair, and maintenance of a ditch, levee, or other work heretofore constructed under any law of this state, the petition shall give a general description of the same, with such particulars as are considered important. The petition shall pray for the organization of a drainage district by the name and with the boundaries proposed and for the appointment of commissioners for the execution of such proposed work, according to the provisions of this and the following sections.

(3) (a) Any lands, the title to which is in the state and which are within the boundaries of any drainage district heretofore created or which may be hereafter created, may be included in any such drainage district in the same manner as is by law provided for adding other lands to drainage districts whenever it is found necessary to include lands in drainage districts as provided by the preceding subsections.

(b) All copies of petitions or notices required by law to be served on account of such lands being included in such drainage districts shall be served on the president of the board having control of such lands in the same manner as is hereinafter provided for the service of petitions and notices on other owners of lands in the district in which said lands are situated.

History: En. Sec. 1, Ch. 129, L. 1921; re-en. Sec. 7265, R.C.M. 1921; re-en. Sec. 7265, R.C.M. 1935; R.C.M. 1947, 89-2201; amd. Sec. 7, Ch. 326, L. 1979.

Cross-References

Receiving affidavits on question of petition sufficiency, 85-8-119.

85-8-102. Amendment and circulation of petition — court consideration. No petition having as many signers as are required by 85-8-101 may be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated and, when filed, together shall be regarded as one petition having as many signers as there are separate signers on the several filed petitions who own lands within the proposed drainage district. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the court the same as if filed with the first petitions placed on file, and the signatures thereon shall be counted in determining whether sufficient landowners have signed the petition.

History: En. Sec. 2, Ch. 129, L. 1921; re-en. Sec. 7266, R.C.M. 1921; re-en. Sec. 7266, R.C.M. 1935; amd. Sec. 40, Ch. 460, L. 1977; R.C.M. 1947, 89-2203; amd. Sec. 8, Ch. 326, L. 1979.

85-8-103. Territory to be included. Said territory need not be contiguous, provided that it be so situated that the public health or welfare will be promoted by such drainage of each part thereof, the benefits of the proposed work in each part will exceed the damages from the costs of said proposed work in each part, and the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

History: En. Sec. 3, Ch. 129, L. 1921; re-en. Sec. 7267, R.C.M. 1921; re-en. Sec. 7267, R.C.M. 1935; R.C.M. 1947, 89-2204.

85-8-104 through 85-8-110 reserved.

85-8-111. Notice of hearing. (1) On such petition being filed, the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice. Thereupon, the clerk of said court for the county in which the proceedings are instituted shall cause 20 days' notice of the filing of such petition to be given:

(a) by posting notice thereof in at least five of the most public places in the proposed district in which said work is to be done;

(b) by serving or causing to be served a copy of such notice on each owner of land within said proposed district residing in any county in which any lands in said proposed district are situated, either personally or by leaving a copy thereof at his last usual place of abode with a person of suitable age and discretion, to whom its contents shall be explained; and

(c) by publishing a copy thereof at least once a week for 3 successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there be no newspaper in any such county, such notice may be published in a newspaper published in an adjoining county.

(2) Such notice shall:

(a) state in what court said petition is filed;

(b) state briefly the starting points, routes, and termini of said drains, ditches, and levees;

(c) give a general description of the proposed work;

(d) give the proposed boundaries of said district (or a general description of all the lands in said proposed district);

(e) give the name proposed for said drainage district; and

(f) state the time and place fixed by the court when and where the petitioners will ask a hearing on said petition.

History: En. Sec. 4, Ch. 129, L. 1921; re-en. Sec. 7268, R.C.M. 1921; re-en. Sec. 7268, R.C.M. 1935; R.C.M. 1947, 89-2205.

85-8-112. Affidavit in case of nonresident petitioners. If any of the owners of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post-office addresses of such nonresidents, if such are known, and if unknown, shall state that upon diligent inquiry their names or post-office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresident owners whose post-office address is known, within 6 days after the first publication of the same.

History: En. Sec. 5, Ch. 129, L. 1921; re-en. Sec. 7269, R.C.M. 1921; re-en. Sec. 7269, R.C.M. 1935; R.C.M. 1947, 89-2206.

85-8-113. Proof of service and publication. The certificate of the clerk of the court or other public officer or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing, or publication thereof.

History: En. Sec. 6, Ch. 129, L. 1921; re-en. Sec. 7270, R.C.M. 1921; re-en. Sec. 7270, R.C.M. 1935; R.C.M. 1947, 89-2207.

Cross-References

Service of process, Rule 4, M.R.Civ.P. (Title 25, ch. 20).

85-8-114. Personal service of notice to confer jurisdiction. Personal service of such notice on (or service by leaving at the last usual place of abode of) all owners of lands or easements or interest in lands within said district shall give the court complete jurisdiction, without posting, publication, or mailing of said notice.

History: En. Sec. 7, Ch. 129, L. 1921; re-en. Sec. 7271, R.C.M. 1921; re-en. Sec. 7271, R.C.M. 1935; R.C.M. 1947, 89-2208.

85-8-115. Insufficient service. (1) If it shall be found, before the hearing on a petition for the organization of a drainage district, that one or more owners of land in said district have not been duly served with notice of hearing on said petition, the court or presiding judge shall not thereby lose jurisdiction. The court or presiding judge in such case shall adjourn the hearing, make an order directing the serving of said notice upon said landowner, and fix the time and manner of service of such notice, which notice shall notify him to appear at said adjourned time and place and be heard on said petition.

(2) Said notice shall be served personally or by leaving at the last usual place of abode of said unserved owners as provided in 85-8-111, not less than 8 days before said adjourned hearing, or published, not less than 14 days before said adjourned hearing, in some newspaper published in the county in which

said owners' lands lie or, if no newspaper be published in said county, then in some newspaper published in an adjoining county.

History: En. Secs. 8, 9, Ch. 129, L. 1921; re-en. Secs. 7272, 7273, R.C.M. 1921; re-en. Secs. 7272, 7273, R.C.M. 1935; R.C.M. 1947, 89-2209, 89-2210.

85-8-116. Procedure on adjourned day. Upon the adjourned day the same proceedings, adjournments, trial findings, and orders may be had as in case of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed later and shall adjourn said hearing so that said notice shall be mailed at least 14 days before said adjourned hearing. In case of failure to publish or post notice as required in this part, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice and order said notice posted or published as directed in 85-8-111. In case of adjournment to permit notice to be given, the notice shall state the fact of such adjournment and the time and place of hearing pursuant to said adjournment.

History: En. Sec. 10, Ch. 129, L. 1921; re-en. Sec. 7274, R.C.M. 1921; re-en. Sec. 7274, R.C.M. 1935; R.C.M. 1947, 89-2211.

85-8-117. Contest by landowners. (1) On the day fixed for hearing on such petition, all parties owning lands or any interest or easement in land within said proposed district or who would be affected thereby may appear and contest:

(a) the sufficiency of the petition;
(b) the sufficiency of the signers of the petition;
(c) the sufficiency of the notice;
(d) the constitutionality of the law; and
(e) the jurisdiction of the court, specifying their objections to such jurisdiction.

(2) The petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest.

History: En. Sec. 11, Ch. 129, L. 1921; re-en. Sec. 7275, R.C.M. 1921; re-en. Sec. 7275, R.C.M. 1935; R.C.M. 1947, 89-2212.

85-8-118. Determination of sufficiency of petition. The court shall hear and determine whether or not the petition contains the signatures of a majority of the owners of lands within the proposed district who are of lawful age and who represent one-third in area of the lands proposed to be affected by said work or the signatures of the owners of more than one-half of such lands and shall determine all questions of law arising on said contest. The district court in which such petition shall be filed or the judge thereof may adjourn the hearing on the petition from time to time for want of sufficient notice, to give time to prepare for trial, or for other good cause.

History: En. Sec. 12, Ch. 129, L. 1921; re-en. Sec. 7276, R.C.M. 1921; re-en. Sec. 7276, R.C.M. 1935; R.C.M. 1947, 89-2213; amd. Sec. 9, Ch. 326, L. 1979.

85-8-119. Receiving affidavits on question of petition sufficiency. The affidavits of any 10 or more of the signers of the petition, stating that they have examined it and are acquainted with the locality of the district and that the petition is signed by a sufficient number of owners of lands in the district to satisfy 85-8-101, may be taken by the court or judge as prima facie evidence of the facts therein stated. The affidavit of any petitioner or other landowner before the court or represented before the court asserting his ownership of lands in the district, properly described, is sufficient evidence to the court of such facts.

History: En. Sec. 13, Ch. 129, L. 1921; re-en. Sec. 7277, R.C.M. 1921; re-en. Sec. 7277, R.C.M. 1935; R.C.M. 1947, 89-2214; amd. Sec. 10, Ch. 326, L. 1979.

85-8-120. Fraudulent deeds. All deeds made for the purpose of establishing or defeating the prayer of said petition and not made in good faith and for a valuable consideration shall be taken and held to be a fraud, and the holders thereof shall not be considered as the owners of the lands described therein.

History: En. Sec. 14, Ch. 129, L. 1921; re-en. Sec. 7278, R.C.M. 1921; re-en. Sec. 7278, R.C.M. 1935; R.C.M. 1947, 89-2215.

Cross-References

Fraud, 28-2-404 through 28-2-406.

85-8-121. Court determination. (1) If the court or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the petition, shall find that the same has not been signed as herein required, the petition shall be dismissed at the cost of the petitioners and judgment shall be entered against said petitioners for the amount of said costs.

(2) If it shall appear that the petition has been so signed, the court or judge shall so find and order any necessary amendments thereto; shall divide the district into three divisions, as nearly equal in area as possible; and shall appoint three suitable and competent persons as commissioners and fix their temporary bonds. In making such appointments one commissioner shall be appointed from each division, and each person so appointed a commissioner must be an actual landowner and resident of the county or counties in the division for which he is appointed such commissioner. If the district is situated in two or more counties, not more than two of said commissioners shall reside in one of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner.

History: (1)En. Sec. 15, Ch. 129, L. 1921; re-en. Sec. 7279, R.C.M. 1921; re-en. Sec. 7279, R.C.M. 1935; Sec. 89-2216, R.C.M. 1947; (2)En. Sec. 16, Ch. 129, L. 1921; re-en. Sec. 7280, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1925; re-en. Sec. 7280, R.C.M. 1935; Sec. 89-2217, R.C.M. 1947; R.C.M. 1947, 89-2216, 89-2217(part).

Part 2

Dissolution of Districts

85-8-201. Dissolution of districts. Whenever the owners of more than one-half of the lands within any drainage district organized under the provisions of this chapter shall present to the district court having jurisdiction of the drainage district a petition signed by them, praying that such drainage district be dissolved, the judge of the court shall cause notice of such petition, together with a copy of the petition, to be served upon the commissioners of the district, directing them to show cause on a day certain, not less than 15 or more than 30 days from the date of the filing of the petition, why the petition should not be granted. The judge, at the time of receiving the petition, shall make an order forbidding the commissioners from incurring any further expense or proceeding with the work of constructing a drain. On the day of hearing the court shall hear the same, and if it appears that the owners of more than one-half of the lands in the drainage district have signed the petition, it shall be granted. Thereupon, the court shall make an order directing the commissioners to file a written report, under oath, setting forth the amount of the debts and obligations of the drainage district. Within 30 days after such report is filed, the court shall cause an assessment to be levied against all lands in the district on the basis of the final report of the commissioners, as confirmed by the court, and if no final report has been made, then on an area basis. The court shall also enter judgment dissolving the district and authorize the commissioners to settle the business of the district on the basis of the final report of the commissioners or on the area basis as confirmed by this court, the commissioners to render their services for same without pay.

History: En. Sec. 7265-A by Sec. 1, Ch. 46, L. 1925; re-en. Sec. 7265.1, R.C.M. 1935; R.C.M. 1947, 89-2202; amd. Sec. 11, Ch. 326, L. 1979.

Part 3
Organization and Operation

85-8-301. Term of commissioners at creation of district. On the creation of a district the commissioners appointed by the judge or court shall hold office until the first Tuesday in May following their appointment and until their successors are elected. When a district is in existence on March 1, 1921, and thereafter an order is made dividing such district into divisions, the terms of office of such commissioners shall cease with the Monday immediately preceding the first Tuesday in May next following.

History: En. Sec. 18, Ch. 129, L. 1921; re-en. Sec. 7282, R.C.M. 1921; amd. Sec. 2, Ch. 50, L. 1925; re-en. Sec. 7282, R.C.M. 1935; R.C.M. 1947, 89-2301.

85-8-302. Election of commissioners — regular term of office. (1) The regular election of commissioners shall be held annually in accordance with 13-1-104 and 13-1-401. The term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and which, on petition, have been divided into divisions, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner. One of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following his election; another of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following his election; and the third of the commissioners shall hold office until the first Tuesday in May in the third year following his election. Thereafter one commissioner shall be elected each year, who shall hold office for a term of 3 years and until his successor is elected and qualified. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

(2) Each commissioner must be a resident of a county where a portion of the district lands is situated.

History: En. Sec. 19, Ch. 129, L. 1921; re-en. Sec. 7283, R.C.M. 1921; amd. Sec. 3, Ch. 50, L. 1925; re-en. Sec. 7283, R.C.M. 1935; amd. Sec. 41, Ch. 460, L. 1977; R.C.M. 1947, 89-2302; amd. Sec. 400, Ch. 571, L. 1979; amd. Sec. 11, Ch. 27, L. 1981.

Cross-References

Residence — rules for determining, 1-1-215.

85-8-303. Repealed. Sec. 15, Ch. 27, L. 1981.

History: En. Sec. 7283A by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.1, R.C.M. 1935; R.C.M. 1947, 89-2303; amd. Sec. 401, Ch. 571, L. 1979.

85-8-304. Results of election. The secretary of the board of commissioners shall enter the result of the election in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first Tuesday in May following, and the names of all of the persons who will compose the board of commissioners for the year next following the first Tuesday in May.

History: En. Sec. 7283B by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.2, R.C.M. 1935; R.C.M. 1947, 89-2304; amd. Sec. 1, Ch. 171, L. 1979; amd. Sec. 402, Ch. 571, L. 1979; amd. Sec. 12, Ch. 27, L. 1981.

Cross-References

Assessments on improvements — taxpayers' approval, limitations, and election procedures, 85-8-624.

85-8-305. Qualifications of electors. (1) At all such elections, except as herein otherwise expressly provided, the following persons holding title or evidence of title to lands within the district shall be entitled to vote:

(a) all of the persons having the qualifications of electors under the constitution and general laws of the state;

(b) guardians, administrators, executors, and trustees residing in the state;

(c) domestic corporations by their duly authorized agents.

(2) In all elections each elector shall be permitted to cast one vote for each 40 acres of land or major fraction thereof in the district owned by such elector, but any elector owning 20 acres or less shall be entitled to one vote.

History: En. Sec. 7283C by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.3, R.C.M. 1935; R.C.M. 1947, 89-2305.

85-8-306. Nominations. Candidates for the office of commissioner to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. This section does not prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.

History: En. Sec. 7283D by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.4, R.C.M. 1935; R.C.M. 1947, 89-2306; amd. Sec. 403, Ch. 571, L. 1979; amd. Sec. 13, Ch. 27, L. 1981; amd. Sec. 41, Ch. 250, L. 1985.

85-8-307. Vacancies. If a vacancy occurs in the board of commissioners, the remaining members of the board shall elect some qualified elector to fill such vacancy, and the person so elected shall hold such office for the unexpired term and until his successor is elected and qualified. The person so appointed must be appointed as a commissioner for the division in which such vacancy exists. In the event there is a vacancy or vacancies in the board of commissioners by reason of no appointment being made, due to the failure of the remaining members of the board to act or on account of no election being held, then, in that event, the judge of the court having jurisdiction over said drainage district shall, upon the receipt of a petition signed by 10% of the resident owners of land in said district, appoint to such vacancy or vacancies such person as the aforesaid petition may designate.

History: En. Sec. 20, Ch. 129, L. 1921; re-en. Sec. 7284, R.C.M. 1921; amd. Sec. 5, Ch. 50, L. 1925; amd. Sec. 1, Ch. 169, L. 1929; re-en. Sec. 7284, R.C.M. 1935; R.C.M. 1947, 89-2307.

85-8-308. Oath and bond of commissioners — quorum. (1) Before entering upon their duties such commissioners shall:

(a) take and subscribe an oath to support The Constitution of the United States and The Constitution of the State of Montana, to faithfully and impartially discharge their duties as such commissioners, and to render a true account of their doings to the court by which they are appointed, whenever required by law or the order of the court; and

(b) execute a bond running to the clerk of said court and his successors in office as obligees, to be filed with said clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as such commissioners and the faithful accounting for and application of all moneys which shall come into their hands as such commissioners.

(2) A majority shall constitute a quorum, and a concurrence of a majority in any matter within their duties shall be sufficient to its determination.

History: En. Sec. 17, Ch. 129, L. 1921; re-en. Sec. 7281, R.C.M. 1921; re-en. Sec. 7281, R.C.M. 1935; R.C.M. 1947, 89-2218.

Cross-References

Oaths, Title 1, ch. 6.

Bonds of county officers and employees, Title 2, ch. 9, part 7.

85-8-309 and 85-8-310 reserved.

85-8-311. Record and vouchers. The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge and of all payments made by them; shall take vouchers for such payments; and shall keep full, accurate, and true minutes of all their proceedings.

History: En. Sec. 21, Ch. 129, L. 1921; re-en. Sec. 7285, R.C.M. 1921; re-en. Sec. 7285, R.C.M. 1935; R.C.M. 1947, 89-2308.

85-8-312. Custody of funds. The county treasurer of the county wherein the court having jurisdiction of such district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon warrants drawn by the board of commissioners of such district, except that the bonds of said district and the interest coupons thereon shall be payable as they mature, on presentation to such treasurer.

History: En. Sec. 22, Ch. 129, L. 1921; re-en. Sec. 7286, R.C.M. 1921; re-en. Sec. 7286, R.C.M. 1935; R.C.M. 1947, 89-2309.

Cross-References

Office of County Treasurer, Title 7, ch. 6, part 21.

85-8-313. Annual report of commissioners. On the first Tuesday of July of each year the commissioners shall file in the office of the clerk of the court having jurisdiction in the matter an itemized statement of all their receipts and disbursements and leave said report in such office for examination by parties interested at all times.

History: En. Sec. 23, Ch. 129, L. 1921; re-en. Sec. 7287, R.C.M. 1921; re-en. Sec. 7287, R.C.M. 1935; R.C.M. 1947, 89-2310.

85-8-314. Court control and compensation of commissioners. (1) The commissioners shall receive for their services such compensation as the court or presiding judge thereof may determine. They shall also receive their actual reasonable expenses. They shall at all times be under the control or direction of the court or presiding judge and shall obey its or his directions; for failure to do so they shall forfeit their compensation and be dealt with summarily as for contempt. Suit may also be brought upon their bonds, in the name of the clerk of the court, and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

(2) The court may at any time require the commissioners to make a report on any matter or matters connected with their duties as commissioners and after due hearing may remove from office any or all of said commissioners for neglect of duty, malfeasance in office, or for other good cause. The court may at any time require the commissioners to give new bonds to the clerk of the court and may fix the amount thereof. Said bonds shall be submitted to the court or the presiding judge thereof for approval.

History: (1)En. Secs. 24, 25, 26, Ch. 129, L. 1921; re-en. Secs. 7288, 7289, 7290, R.C.M. 1921; re-en. Secs. 7288, 7289, 7290, R.C.M. 1935; Secs. 89-2311, 89-2312, 89-2313, R.C.M. 1947; (2)En. Sec. 92, Ch. 129, L. 1921; re-en. Sec. 7356, R.C.M. 1921; re-en. Sec. 7356, R.C.M. 1935; Sec. 89-2812, R.C.M. 1947; R.C.M. 1947, 89-2311, 89-2312, 89-2313, 89-2812.

85-8-315. Presumption of regularity of commissioners' acts. Commissioners of drainage districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any drainage district or any part of any such report is contested, remonstrated against, or called in question, the burden of proof shall rest upon the contestant, remonstrant, or questioner.

History: En. Sec. 95, Ch. 129, L. 1921; re-en. Sec. 7359, R.C.M. 1921; re-en. Sec. 7359, R.C.M. 1935; R.C.M. 1947, 89-2815.

85-8-316 through 85-8-320 reserved.

85-8-321. Organization, appointments, and preliminary report. (1) Within 10 days after said commissioners shall be appointed and qualified, they shall meet and organize by electing one of their number president and a secretary, who may or may not be one of their number.

(2) They shall appoint one or more attorneys to assist in the establishment of the district; advise with its officers, agents, and employees; and prepare reports and other necessary documents. The court shall allow such attorney or attorneys just compensation to be taxed in the case.

(3) They shall also appoint a competent civil and drainage engineer, who may be an individual, a partnership, or a corporation, who may employ

assistants and make surveys; and who, with the approval of the court, may employ a consulting engineer or secure expert advice. The expense of the engineer, his assistants, and the consulting engineer shall be taxed as expenses under the petition. As soon thereafter as may be, they shall personally examine the lands in said district and make a preliminary report to the court, which report shall state:

(a) whether said proposed work is necessary or would be of utility in carrying out the purposes of the petition;

(b) whether the proposed work would promote the public health;

(c) whether the proposed work would promote the public welfare;

(d) whether the total benefits from said proposed work will exceed the cost thereof, together with the damages resulting therefrom, and in arriving at this, they shall include all benefits and all damages resulting therefrom both within and without said district.

(4) Said commissioners shall in said report fix, as near as may be, and report to the court the boundaries of said proposed drainage district. Said boundaries shall not be changed from those in the petition described so as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within said changed boundaries.

History: En. Sec. 27, Ch. 129, L. 1921; re-en. Sec. 7291, R.C.M. 1921; re-en. Sec. 7291, R.C.M. 1935; R.C.M. 1947, 89-2314.

85-8-322. Adoption of feasible plan. If said proposed work, as described in the petition, is not best suited to carry out the purposes of the petition, the commissioners shall consider and base their report upon the one best suited to carry out those purposes and propose to the court the one considered by them.

History: En. Sec. 28, Ch. 129, L. 1921; re-en. Sec. 7292, R.C.M. 1921; re-en. Sec. 7292, R.C.M. 1935; R.C.M. 1947, 89-2315.

85-8-323. Hearing and notice on preliminary report. Upon the filing of the preliminary report the court or the presiding judge thereof shall by order fix a time and place when and where the same shall be heard at some general or special term of said court, not less than 30 days from the filing of said report. Notice of the time and place of hearing upon said preliminary report shall be given to all interested persons by publishing a brief notice of the filing of said report, including a brief statement of the substance of said report, in one or more newspapers published in each county in which any land in said proposed drainage district shall be situated (or, if no newspaper is published in said county, in one or more newspapers in an adjoining county) once in each week for 3 successive weeks prior to the day appointed for hearing thereon. Said notice shall:

(1) describe all lands included by said report in said district which were not included therein by the petition and state that such lands are to be included in said district; and

(2) describe all lands excluded from said district which were by the petition included therein and shall state that such lands are to be excluded from said district.

History: En. Sec. 29, Ch. 129, L. 1921; re-en. Sec. 7293, R.C.M. 1921; re-en. Sec. 7293, R.C.M. 1935; R.C.M. 1947, 89-2316.

85-8-324. Adjournment of hearing or trial of issues. Upon the day fixed for hearing upon said report, said court may adjourn said hearing for good cause or may proceed to hear, try, and determine all issues arising upon said report.

History: En. Sec. 30, Ch. 129, L. 1921; re-en. Sec. 7294, R.C.M. 1921; re-en. Sec. 7294, R.C.M. 1935; R.C.M. 1947, 89-2317.

85-8-325. Remonstrance by interested parties. Any interested party may appear and remonstrate against said report or any material part thereof. All remonstrances shall be in writing, be verified on oath, be filed at least 5 days before the day fixed for hearing, and shall set forth the facts upon which they are based.

History: En. Sec. 31, Ch. 129, L. 1921; re-en. Sec. 7295, R.C.M. 1921; re-en. Sec. 7295, R.C.M. 1935; R.C.M. 1947, 89-2318.

85-8-326. Service of owners of added lands. When lands are added to the district, the owners thereof shall be served with said notice as provided for serving of notice of hearing on the petition.

History: En. Sec. 32, Ch. 129, L. 1921; re-en. Sec. 7296, R.C.M. 1921; re-en. Sec. 7296, R.C.M. 1935; R.C.M. 1947, 89-2319.

85-8-327. Procedure at court hearing and order. (1) All issues arising upon said preliminary report shall be tried by the court without a jury.

(2) If the court shall find in favor of the remonstrance or if said report be that the proposed work will not promote the public health and will not promote the public welfare or that the benefits from said proposed work will not exceed the damages and cost of construction and no remonstrance against said report is filed, the petition shall be dismissed, the costs taxed against the petitioners, and judgment entered therefor, as provided in 85-8-350.

(3) If the preliminary report be that the benefits of said proposed work (or work proposed by the commissioners) will exceed the damages and the cost of construction and that the public health will be promoted thereby or that the public welfare will be promoted thereby and no remonstrance thereto is filed or if on the trial of the issues made on said report the court finds that the benefits will exceed the damages and cost of construction and that the public health or the public welfare will be promoted by said proposed work, the court shall make and file such findings in writing and make an order confirming said report or directing amendment of the report to conform to the findings of said court, and when so amended the court shall by order confirm the same and direct said commissioners to proceed with said work with all convenient speed.

(4) Such findings and order shall be final and conclusive unless appealed from to the supreme court within 30 days after filing thereof.

History: En. Secs. 33, 34, 35, Ch. 129, L. 1921; re-en. Secs. 7297, 7298, 7299, R.C.M. 1921; re-en. Secs. 7297, 7298, 7299, R.C.M. 1935; R.C.M. 1947, 89-2320, 89-2321, 89-2322.

Cross-References

Judgment on dismissal of proceedings — assessment of costs, 85-8-350.

85-8-328. Corporate nature of drainage district. (1) Upon entering of such order of confirmation of said preliminary report of record, such drainage district shall be and is thereby declared to be organized as a drainage district, by the name mentioned in said petition or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate, by said name fixed in said order, with the right to sue and be sued, to adopt and use a seal, and to have perpetual succession.

(2) The commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authority of said drainage district, exercise the functions conferred on them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work.

History: En. Secs. 36, 37, Ch. 129, L. 1921; re-en. Secs. 7300, 7301, R.C.M. 1921; re-en. Secs. 7300, 7301, R.C.M. 1935; R.C.M. 1947, 89-2323, 89-2324.

85-8-329. Necessity of preliminary proceedings. All proceedings herein required, prior to the entry of such order of confirmation of record, shall be deemed to be and are hereby declared to be necessary to the formation of said body corporate.

History: En. Sec. 38, Ch. 129, L. 1921; re-en. Sec. 7302, R.C.M. 1921; re-en. Sec. 7302, R.C.M. 1935; R.C.M. 1947, 89-2325.

85-8-330 through 85-8-340 reserved.

85-8-341. Preparation of report — contents. (1) As soon as may be after the confirmation of the preliminary report or within such time as the court may direct, said commissioners shall proceed to have all necessary levels taken and surveys made and shall lay out said proposed work; make a map thereof and plans, profiles, and other specifications thereof; and report in writing to the court:

(a) whether the starting points, routes, and termini of the proposed work and the proposed location thereof as contained in the petition are in all respects proper and feasible and, if not, shall report such as are most proper and feasible;

(b) if it be found necessary to change the boundaries of said proposed district, as fixed by them previously, they shall report said proposed change and, if possible, shall report the names, residence, and post-office addresses of the owner or owners of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that if the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes of boundaries;

(c) what lands within the district, as reported by them, will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement, or interest, by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work;

(d) what lands (including improvements when improvements receive benefits), easements, irrigation ditches, cities, towns, counties, individuals, and other corporations and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, levees, or other facilities, repairs thereto, maintenance thereof, and the incidental expenses attached to the establishment of such drainage district;

(e) the total amount, as near as they can determine, that said proposed work will cost, which cost shall include all incidental expenses, the reasonable cost of organizing said district, the costs of proceeding and all probable damage to lands, both within and without the district, together with a reasonable attorney fee for the petitioners, which cost will hereinafter be referred to as cost of construction.

(2) If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, including improvements where the same are benefited or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations and assess such sum against said tracts, lots, and corporations.

(3) If any individual, association of individuals, or corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the recipient thereof its proportionate share of the costs of said proposed work. The word "corporation", whenever contained in this chapter, shall be construed to include:

(a) railroad companies;
(b) other private and quasi-public corporations of all kinds;
(c) towns;
(d) cities;
(e) villages;
(f) other drainage districts; and
(g) counties.

(4) They shall apportion and assess the part of this cost of construction, not assessed as above, against the several benefited tracts, lots (including improvements when the same are benefited), and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as assessments for construction.

(5) The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

(6) They shall include in their report said map, plans, and other specifications and file the same with their report.

History: (1)(a) thru (1)(c)En. Secs. 39, 40, 41, 42, Ch. 129, L. 1921; re-en. Secs. 7303, 7304, 7305, 7306, R.C.M. 1921; re-en. Secs. 7303, 7304, 7305, 7306, R.C.M. 1935; Secs. 89-2326, 89-2327, 89-2328, 89-2329, R.C.M. 1947; (1)(d)En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R.C.M. 1921; amd. Sec. 2, Ch. 169, L. 1929; re-en. Sec. 7307, R.C.M. 1935; amd. Sec. 1, Ch. 409, L. 1973; Sec. 89-2330, R.C.M. 1947; (1)(e)En. Sec. 44, Ch. 129, L. 1921; re-en. Sec. 7308, R.C.M. 1921; re-en. Sec. 7308, R.C.M. 1935; Sec. 89-2331, R.C.M. 1947; (2)En. Sec. 45, Ch. 129, L. 1921; re-en. Sec. 7309, R.C.M. 1921; re-en. Sec. 7309, R.C.M. 1935; amd. Sec. 2, Ch. 409, L. 1973; Sec. 89-2332, R.C.M. 1947; (3)En. Sec. 46, Ch. 129, L. 1921; re-en. Sec. 7310, R.C.M. 1921; re-en. Sec. 7310, R.C.M. 1935; amd. Sec. 3, Ch. 409, L. 1973; Sec. 89-2333, R.C.M. 1947; (4)En. Sec. 47, Ch. 129, L. 1921; re-en. Sec. 7311, R.C.M. 1921; re-en. Sec. 7311, R.C.M. 1935; amd. Sec. 4, Ch. 409, L. 1973; Sec. 89-2334, R.C.M. 1947; (5)En. Sec. 48, Ch. 129, L. 1921; re-en. Sec. 7312, R.C.M. 1921; re-en. Sec. 7312, R.C.M. 1935; Sec. 89-2335, R.C.M. 1947; (6)En. Sec. 49, Ch. 129, L. 1921; re-en. Sec. 7313, R.C.M. 1921; re-en. Sec. 7313, R.C.M. 1935; Sec. 89-2336, R.C.M. 1947; R.C.M. 1947, 89-2326, 89-2327, 89-2328, 89-2329, 89-2330(part), 89-2331, 89-2332, 89-2333, 89-2334, 89-2335, 89-2336.

85-8-342. Apportionment of costs. (1) In apportioning the costs and expenses mentioned in 85-8-341(1)(d), the following classes of property, persons, corporations, and municipalities shall be assessed:

(a) all lands which are swampy, bogged, or waterlogged and will be relieved and improved by virtue of the construction of the proposed drainage system;

(b) all lands which are becoming or are liable to become swampy, bogged, or waterlogged and which the construction of the proposed drainage system will prevent from being thus affected;

(c) all lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

(d) all lands and improvements thereto upon which or through which surface or seepage water will be prevented from flowing or can be prevented from flowing by virtue of the construction of the proposed drainage system;

(e) all lands or improvements which will sustain any direct benefit of any kind or character whatsoever;

(f) all railways, whether operated by steam, electricity, or otherwise, whose right-of-way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system or levee project;

(g) all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;

(h) all owners of irrigation ditches or canals included within said district or from which water seeps, drains, or wastes to, upon, or through lands included within the district;

(i) the county or counties which the proposed drainage system traverses or which will be benefited as to public health, convenience, welfare, or improvement of any public highway;

(j) all incorporated cities or towns and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system.

(2) In apportioning the costs and expenses mentioned in 85-8-341(1)(d), the following principles shall be regarded:

(a) All of the above classes of lands, improvements, railways, public utilities, irrigation ditches, counties, cities, towns, townsites, and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

(b) The benefits to accrue from the construction of the proposed drainage system to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands shall be considered in apportioning the assessment to them.

(c) In the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities, nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof, or the incidental expenses attached to the establishment of such drainage district.

(d) The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, public utility, individual, or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged, or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right-of-way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons, or corporations, public or private, contribute to the damaged condition of the lands to be reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.

History: En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R.C.M. 1921; amd. Sec. 2, Ch. 169, L. 1929; re-en. Sec. 7307, R.C.M. 1935; amd. Sec. 1, Ch. 409, L. 1973; R.C.M. 1947, 89-2330(part).

Cross-References

Procedure to levy additional assessments, 85-8-615.

85-8-343. Commissioners to use most feasible plan. The commissioners shall not be confined to the points of commencement, routes, or termini of the drains or ditches or the number, extent, or size of the same or the location, plan, or extent of any levee, ditch, or other work as proposed by the petitioners but shall locate, design, lay out, and plan the same in such manner as to them shall seem best to promote the public health or welfare and to drain or to protect the lands, including improvements, of the parties interested with the least damage and the greatest benefit to all lands affected thereby. Any plan proposed by the commissioners may, on the application of any interested person, on the hearing provided for hereinafter, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

History: En. Sec. 50, Ch. 129, L. 1921; re-en. Sec. 7314, R.C.M. 1921; re-en. Sec. 7314, R.C.M. 1935; amd. Sec. 5, Ch. 409, L. 1973; R.C.M. 1947, 89-2337.

85-8-344. Alteration of boundaries. If the commissioners find that the proposed district, as described in the filed petition, will not embrace all of the lands, including improvements, that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands or improvements, as the case may be, and the boundaries adopted and reported by them, upon the hearing of their report, as hereinafter provided, upon their application or that of any person interested, may be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

History: **En. Sec. 51, Ch. 129, L. 1921; re-en. Sec. 7315, R.C.M. 1921; re-en. Sec. 7315, R.C.M. 1935; amd. Sec. 6, Ch. 409, L. 1973; R.C.M. 1947, 89-2338.**

85-8-345. Notice of hearing of report. (1) Upon the filing of such report, the court shall make an order fixing the time and place when and where all interested persons may appear and remonstrate against the confirmation thereof. The clerk of such court shall cause notice to be given to all parties interested by publication thereof for at least 3 successive weeks before the date of such hearing in at least one newspaper in each county wherein lands located in such district are situate, which notice shall contain a statement of the time and place of the hearing of said report and a brief statement of the substance thereof.

(2) Upon a date not later than the date of the first publication of the notice referred to in the last subsection, the clerk of such court shall also cause to be mailed to each of the persons or corporations recommended by said report to be assessed or whose lands are recommended by said report to be included in said district, at his or its last known post-office address, a notice containing a brief description of the land or easement belonging to such person or corporation benefited or damaged; the net damage awarded to such tract, parcel, easement, or corporation; and the sum assessed against such benefited parcel, tract, easement, or corporation.

History: **En. Secs. 52, 53, Ch. 129, L. 1921; re-en. Secs. 7316, 7317, R.C.M. 1921; re-en. Secs. 7316, 7317, R.C.M. 1935; R.C.M. 1947, 89-2339, 89-2340.**

85-8-346. Modification of report. If the court finds that the report requires modification, the same may, by order of the court, be referred back to the commissioners, who may be required to modify it in any respect.

History: **En. Sec. 54, Ch. 129, L. 1921; re-en. Sec. 7318, R.C.M. 1921; re-en. Sec. 7318, R.C.M. 1935; R.C.M. 1947, 89-2341.**

85-8-347. Confirmation of report — appeals. If there be no remonstrance or if the finding be in favor of the validity of the proceedings or after the report shall have been modified to conform to the findings, the court shall confirm the report. The order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed unless within 30 days an appeal be taken to the supreme court. The said order of confirmation shall also fix the commissioners' bond.

History: **En. Sec. 55, Ch. 129, L. 1921; re-en. Sec. 7319, R.C.M. 1921; re-en. Sec. 7319, R.C.M. 1935; R.C.M. 1947, 89-2342.**

Cross-References

Construction assessments — annual installment, 85-8-611.

85-8-348. Modification of court order. Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified, or changed, in whole or in part, on petition of the commissioners, after such notice to parties adversely interested as the court may require.

History: **En. Sec. 56, Ch. 129, L. 1921; re-en. Sec. 7320, R.C.M. 1921; re-en. Sec. 7320, R.C.M. 1935; R.C.M. 1947, 89-2343.**

85-8-349. Supplemental report. At any time prior to making the order confirming said report or thereafter, the court may permit the commissioners to present and file a supplemental report or amend their report as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter, make such order as the case may require.

History: **En. Sec. 57, Ch. 129, L. 1921; re-en. Sec. 7321, R.C.M. 1921; re-en. Sec. 7321, R.C.M. 1935; R.C.M. 1947, 89-2344.**

85-8-350. Judgment on dismissal of proceedings — assessment of costs. (1) In case the petition or proceedings are dismissed as provided in 85-8-327, a judgment shall be entered for the costs, expenses, and liabilities incurred in said proceedings against the petitioners and in favor of the commissioners, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings or have recovered costs on successful contests therein.

(2) In case the proceedings are dismissed at any time or the district is discontinued for any cause subsequent to the time provided in 85-8-327, a judgment shall be entered directing the commissioners of the district to assess the costs, expenses, and liabilities incurred in said proceedings, up to and including the time of such dismissal and discontinuation, on an acreage basis against the lands in said district, which assessment shall be a lien upon said lands from the date of said judgment superior to the lien of any other judgment, mortgage, or construction lien against said lands. Said assessment shall be verified by the commissioners of the district the same as assessments to pay costs of construction. Such assessments shall be spread upon the tax rolls of the counties in which said district is situated and shall be collected by the county treasurers of such counties the same as assessments to pay costs of construction are collected. Such assessments shall be payable on or before November 30 following the date upon which they are so spread upon the assessment roll of such counties. The money so collected shall be paid out upon warrants issued by the commissioners of the district to those who have rendered service or advanced money in connection with said district or have recovered costs on successful contests therein. Should such assessment, for any cause, be not sufficient for all such costs, expenses, and liabilities, then additional assessments shall be made and collected in like manner until sufficient funds have been raised to pay all such costs, expenses, and liabilities.

History: **En. Sec. 58, Ch. 129, L. 1921; re-en. Sec. 7322, R.C.M. 1921; amd. Sec. 3, Ch. 169, L. 1929; re-en. Sec. 7322, R.C.M. 1935; R.C.M. 1947, 89-2345; amd. Sec. 149, Ch. 370, L. 1987.**

Cross-References

Procedure at court hearing and order, 85-8-327.

85-8-351. Statement of costs before entry of judgment. Before any such judgment is entered, said commissioners shall file with the clerk of the district court in which said proceedings were instituted an itemized statement of such costs and expenses, duly verified, upon which an order shall issue requiring said petitioners or landowners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners or landowners for the amount of said costs and expenses. Notice of the hearing of said order to show cause shall be given to said petitioners or landowners by mailing to each a copy thereof, to their last known post-office address, at least 20 days prior to the time set for hearing and by publication of the same in one or more newspapers published in the county where the proceedings are pending at least 3 successive weeks prior to the day set for such hearing. Said notice need not contain an itemized statement of said account.

History: En. Sec. 59, Ch. 129, L. 1921; re-en. Sec. 7323, R.C.M. 1921; amd. Sec. 4, Ch. 169, L. 1929; re-en. Sec. 7323, R.C.M. 1935; R.C.M. 1947, 89-2346.

85-8-352. Contribution among petitioners. All petitioners shall, among themselves, contribute to the payment of said judgment in proportion to the number of acres of land they have within the boundaries of the proposed district at the time of filing of said petition.

History: En. Sec. 60, Ch. 129, L. 1921; re-en. Sec. 7324, R.C.M. 1921; re-en. Sec. 7324, R.C.M. 1935; R.C.M. 1947, 89-2347.

85-8-353 through 85-8-360 reserved.

85-8-361. Contracts. In all cases where the work to be done at any one time under the direction of the commissioners shall, in their opinion, cost to exceed $2,500, the same shall be let to the lowest responsible bidder, and the commissioners shall advertise for sealed bids, by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper published in an adjoining county, which notice shall particularly set forth the time and place when and where the bids advertised will be opened, the kind of work to be let, and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids.

History: En. Sec. 81, Ch. 129, L. 1921; re-en. Sec. 7345, R.C.M. 1921; re-en. Sec. 7345, R.C.M. 1935; R.C.M. 1947, 89-2801.

Cross-References

Public contracts, Title 18, ch. 1.

85-8-362. Interest of commissioners in contracts forbidden. The commissioners shall not, during their term of office, be interested, directly or indirectly, in any contract for the construction of any drain, ditch, levee, or other work in such drainage district; in the sale of materials therefor; or in the wages of or supplies for men or teams employed on any such work in said district.

History: En. Sec. 82, Ch. 129, L. 1921; re-en. Sec. 7346, R.C.M. 1921; re-en. Sec. 7346, R.C.M. 1935; R.C.M. 1947, 89-2802.

Cross-References

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

85-8-363. Commissioners' right of entry. The commissioners, their agents, servants, and employees shall have the right to go upon all lands along any drain, ditch, levee, or embankment in their district to inspect, deepen, widen, and repair the same, whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

History: En. Sec. 70, Ch. 129, L. 1921; re-en. Sec. 7334, R.C.M. 1921; re-en. Sec. 7334, R.C.M. 1935; R.C.M. 1947, 89-2406.

Cross-References

Surface water and ground water — entry on land, 85-2-115.

85-8-364. Payment or tender of damages. (1) The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon the lands (for damage to which the award is made) for the construction of any drains, ditches, or levees proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the land or the owner will not receive payment or there exists a mortgage or other lien against the same or the commissioners cannot for any other reason pay him, they may deposit the same damages with the clerk of the court, for the benefit of the owner or parties interested, to be paid or distributed as the court shall direct, and such payment shall have the same effect as the tender to and acceptance of the damages awarded by the true owner of the land.

(2) This section shall not, however, prevent said commissioners, their agents, servants, and employees going upon said lands to do any and all work found necessary prior to making their assessment of benefits and award of damages and the trial on their report thereof.

History: En. Sec. 83, Ch. 129, L. 1921; re-en. Sec. 7347, R.C.M. 1921; re-en. Sec. 7347, R.C.M. 1935; R.C.M. 1947, 89-2803.

85-8-365. Location of drains. When practicable, said drains provided for herein shall be laid out and constructed on the side of public highways or along natural watercourses.

History: En. Sec. 84, Ch. 129, L. 1921; re-en. Sec. 7348, R.C.M. 1921; re-en. Sec. 7348, R.C.M. 1935; R.C.M. 1947, 89-2804.

85-8-366. Drains on railroad lands. (1) Said commissioners shall have the right to lay out and construct all necessary drains, ditches, and levees across any railway right-of-way or yards in their district. Any railway company whose right-of-way or yards cross the line of any proposed drain, ditch, or levee shall open its right-of-way or yards and permit such drain, ditch, or levee to cross the same as soon as said drain, ditch, or levee is constructed to such right-of-way.

(2) Every drainage district shall be liable to the railway company whose right-of-way or yard any of its drains, ditches, or levees cross for the reasonable cost of the culverts and bridges made necessary by said drain, ditch, or levee crossing said right-of-way or yards but not of more expensive character than the average other culverts and bridges on said division of railway crossing streams or ditches of approximately the same width and depth and within 100 miles of said district ditches.

(3) Upon receiving 15 days' notice in writing, any railway company in whose right-of-way or yard any such drain, ditch, or levee is laid out shall open its right-of-way or yards and permit said commissioners and their contractors, agents, and employees to construct said drain, ditch, or levee or to repair, maintain, or clean out same across said right-of-way or yards. For every day after the end of said 15 days that said railroad company fails to open its said right-of-way or yard, as hereinbefore required, it shall forfeit $25 to said drainage district, to be collected in an action, as other forfeitures are collected, or set off against any damages that have been awarded to such company. If said railway company fails to open its right-of-way or yard along the line of said

drainage district, drain, ditch, or levee, the commissioners may, at any time after the expiration of said 15 days, open such right-of-way and yard along the line of said drains, ditches, and levees and construct the same.

History: **En. Secs. 71, 72, 73, Ch. 129, L. 1921; re-en. Secs. 7335, 7336, 7337, R.C.M. 1921; re-en. Secs. 7335, 7336, 7337, R.C.M. 1935; R.C.M. 1947, 89-2407, 89-2408, 89-2409.**

Cross-References

Crossing of roads and streams, 69-14-535.

85-8-367. Commissioners' powers during emergency. Commissioners having charge of any completed drain, ditch, levee, or other work constructed under any drainage law of the state of Montana, whether now in force or repealed, shall be authorized, in the case of an emergency, to make such repairs as may be necessary for the preservation and protection of the work under their control.

History: **En. Sec. 63, Ch. 129, L. 1921; re-en. Sec. 7327, R.C.M. 1921; amd. Sec. 5, Ch. 169, L. 1929; amd. Sec. 1, Ch. 97, L. 1931; re-en. Sec. 7327, R.C.M. 1935; R.C.M. 1947, 89-2350(part).**

Cross-References

Authority to borrow money and issue notes or bonds, 85-8-501.

85-8-368. Annual report — objections. (1) The commissioners shall, on or before the first Tuesday of March of each year, file with the clerk of court having jurisdiction a report in which they shall specify in detail:

(a) the emergency repairs which they have made during the preceding year;

(b) the labor and repairs then necessary to the preservation and protection of the work under their control;

(c) the places where such labor and repairs are especially needed;

(d) the amount of the outstanding indebtedness of the district; and

(e) the sum to be assessed against each tract, lot, easement, or corporation to pay all emergency repairs theretofore done, necessary labor and repairs to be done during the ensuing year, maintenance, incidental expenses, and interest on and principal of all outstanding indebtedness.

(2) No notice of the filing of such report shall be necessary. All such assessments shall be apportioned on the last assessment roll of drain districts or on the last assessments in drainage districts confirmed by the court having jurisdiction thereof.

(3) Within 30 days after filing such annual report, at a time and place to be fixed by the court or presiding judge, the court or presiding judge shall examine said report, hear all objections to the same, fix and determine the amount of such assessments, and cause such adjudication to be entered of record in said court and a certified copy of the same to be delivered to said commissioners.

History: **(1), (2)En. Sec. 63, Ch. 129, L. 1921; re-en. Sec. 7327, R.C.M. 1921; amd. Sec. 5, Ch. 169, L. 1929; amd. Sec. 1, Ch. 97, L. 1931; re-en. Sec. 7327, R.C.M. 1935; Sec. 89-2350, R.C.M. 1947; (3)En. Sec. 64, Ch. 129, L. 1921; re-en. Sec. 7328, R.C.M. 1921; re-en. Sec. 7328, R.C.M. 1935; Sec. 89-2351, R.C.M. 1947; R.C.M. 1947, 89-2350(part), 89-2351.**

Part 4
Alteration of District

85-8-401. Alterations or additions to district — petition required. (1) Whenever, in the judgment of the commissioners of any drain district or drainage district, it is necessary or will be beneficial to such district to make any alteration and/or any addition to the drainage system of such district, they shall file a petition with the clerk of the court having jurisdiction of such district, in which shall be stated:

(a) the proposed alteration of and/or the proposed addition to the drainage system of said district;

(b) the necessity therefor; and

(c) the probable cost of making such alteration and/or addition.

(2) Whenever such commissioners shall fail or refuse to file such petition or in event any landowners desire to file such petition, such petition may be filed by such landowners, provided the same be signed by the owners of at least 40% in area of the lands in said district.

History: En. Sec. 7364C by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.3, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1953; R.C.M. 1947, 89-2702.

85-8-402. Hearing — notice and service. Upon the filing of such petition, a judge of said district court shall set the same for hearing and direct the clerk of such court to give notice thereof. Such notice shall contain a concise statement of the proposed alteration and/or addition and the estimated cost thereof, which notice must be served and published at least 20 days before the date fixed for such hearing. Service of such notice shall be made by certified or registered mail, addressed to each landowner and corporation that may be liable for the payment of any portion of the cost of making such alteration and/or addition, at his or its post-office address, if the same can be ascertained by the exercise of due diligence. Such notice shall be published once a week for 20 days prior to such date in some newspaper, to be designated in the order fixing the date for such hearing, published in the county where said court is held; provided, however, that if all interested landowners and corporations are so served, such notice need not be published.

History: En. Sec. 7364D by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.4, R.C.M. 1935; R.C.M. 1947, 89-2703.

85-8-403. Court order — dismissal of petition. (1) Any such landowner or corporation may, at any time prior to 5 days before the date fixed for such hearing, file his or its objections to such petition. A copy of such objections shall be delivered to the attorney for said commissioners, if they have an attorney of record, or to the chairman of the board of commissioners of said district, if there be no such attorney of record, prior to filing the original thereof with the clerk of said court.

(2) If objections are made and filed by the owners of at least 75% in area of the lands in said district, said petition shall be dismissed and no further proceedings had thereon. If the owners of less than 75% in area of the lands in said district object to such petition, then, on the date fixed for such hearing or upon any day to which such hearing may be adjourned, the court having jurisdiction will hear testimony in support of said petition and in opposition thereto.

(3) After such hearing the court shall determine whether the proposed alteration and/or addition is necessary, whether it will be beneficial to said district and improve the drainage system thereof, and either approve or deny such petition or modify and change the proposed alteration and/or addition. If the court shall approve such petition or modify and change the alteration and/or addition proposed, the court shall by order direct said commissioners to proceed with said work with all convenient speed.

(4) So far as possible, such hearing shall be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, so far as applicable, shall govern in the conduct of such hearings.

History: En. Sec. 7364E by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.5, R.C.M. 1935; amd. Sec. 2, Ch. 70, L. 1953; R.C.M. 1947, 89-2704.

85-8-404. Appeals and assessments. Any party interested in such hearing, deeming himself aggrieved by the order of the court thereon, may appeal from such order to the supreme court of Montana within 30 days after the entry of such order. If no such appeal is taken within the time limit, the order of the court made upon such hearing will be final and conclusive. If any such alterations and/or additions are authorized by such order, the same shall be made by the commissioners of said district and the cost thereof apportioned in accordance with the last assessment roll of any such drain district or in accordance with the last assessments of any such drainage district confirmed by the court.

History: En. Sec. 7364F by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.6, R.C.M. 1935; R.C.M. 1947, 89-2705.

85-8-405. Exclusion of lands from district. Any lands within a drainage district, which district is not bonded or indebted and which lands have not been and will not in the future be benefited by the drainage system of the district and which lands do not contribute water to seep other lands in the district, may be excluded or eliminated from said district by an order of the district court of the county wherein the said lands are situate upon the proceedings hereinafter set forth being had.

History: En. Sec. 1, Ch. 155, L. 1941; R.C.M. 1947, 89-2706.

85-8-406. Court action — parties. An action for the exclusion of lands from any such drainage district may be brought in the district court of the county wherein said lands are situated by the owner or owners in fee of said lands, who shall be designated as the plaintiff or plaintiffs, and in said action the members of the board of drainage commissioners of said drainage district shall be made defendants.

History: En. Sec. 2, Ch. 155, L. 1941; amd. Sec. 1, Ch. 196, L. 1943; R.C.M. 1947, 89-2707.

85-8-407. Complaint required — contents. (1) Said action shall be commenced by filing in the office of the clerk of the district court a complaint which must contain:

(a) the title of the action, the name of the court and the county in which the action is brought, and the names of the parties to the action;

(b) a statement of the facts constituting the cause of the action, in ordinary and concise language;

(c) a demand for the relief which the plaintiff claims.

(2) The complaint shall be verified in the same manner as complaints in other civil actions.

History: **En. Sec. 3, Ch. 155, L. 1941; R.C.M. 1947, 89-2708.**

85-8-408. Summons. (1) Upon the filing of the complaint the clerk of the court shall issue a summons which shall contain, in addition to the matters specified in Rules 4 and 12(a), Montana Rules of Civil Procedure, a brief statement of the relief demanded and a description of the lands sought to be excluded from the drainage district.

(2) The summons shall be served upon the president and secretary of the board of drainage commissioners, and such service shall be deemed as service upon the drainage district.

History: **(1)En. Sec. 4, Ch. 155, L. 1941; Sec. 89-2709, R.C.M. 1947; (2)En. Sec. 5, Ch. 155, L. 1941; amd. Sec. 2, Ch. 196, L. 1943; Sec. 89-2710, R.C.M. 1947; R.C.M. 1947, 89-2709, 89-2710.**

85-8-409. Rules of practice applicable. The same rules relative to the filing of answers and replies relative to other causes of action affecting the title to real property shall apply in actions to exclude lands from a drainage district, and all issues arising may be tried by the court without a jury.

History: **En. Sec. 6, Ch. 155, L. 1941; amd. Sec. 45, Ch. 460, L. 1977; R.C.M. 1947, 89-2711.**

85-8-410. Court order excluding lands. If the issue shall be found in favor of the plaintiff, the court may make its order describing the lands to be excluded from the district, and a certified copy of the same shall be filed in the office of the county recorder of the county wherein the lands are situate. From and after the date of such order the lands shall no longer be liable for any assessment levied by the district against the lands excluded.

History: **En. Sec. 7, Ch. 155, L. 1941; R.C.M. 1947, 89-2712.**

85-8-411. Appeals. Appeals may be taken from the orders and judgments of the district court to the supreme court of the state of Montana in the same manner as appeals in other causes of action affecting the title to real property.

History: **En. Sec. 8, Ch. 155, L. 1941; R.C.M. 1947, 89-2713.**

Cross-References

Appeals to Supreme Court, Title 25, ch. 21.

85-8-412 through 85-8-420 reserved.

85-8-421. Procedure to bring other drained lands into district. (1) Whenever any drained lands outside a drainage district are receiving the benefits of the drains of said district, by direct or indirect, natural or artificial connection therewith, the commissioners of said district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for the benefits received by them from the drains, ditches, or levees of said district.

(2) Upon the filing of said report, the court shall order the owners of such lands to be notified of the filing of said report and the contents thereof and shall require such owners to show cause at a time and place therein fixed, not less than 20 days thereafter, why their lands should not be brought into said district and assessed for said benefits.

(3) At the time and place fixed for hearing said report, any of said landowners may appear and remonstrate against the confirmation of said report. All remonstrances shall be in writing, verified, and shall set forth the facts on which they are based. All issues arising on said report shall be tried by the court without a jury.

History: En. Secs. 85, 86, 87, Ch. 129, L. 1921; re-en. Secs. 7349, 7350, 7351, R.C.M. 1921; re-en. Secs. 7349, 7350, 7351, R.C.M. 1935; R.C.M. 1947, 89-2805, 89-2806, 89-2807.

Cross-References

Assessment of unassessed, benefited lands, 85-8-618.

85-8-422. Court order for annexation — appeal. (1) If the court shall find that said lands or any of them are receiving the benefits of any such drain, ditch, or levee, the court shall so find in writing and shall order said lands to be annexed to and made a part of said district and benefits to be assessed against the same by the commissioners of said district.

(2) Said order shall be final and conclusive unless appealed from to the supreme court within 30 days from the date of entry thereof.

History: En. Secs. 88, 89, Ch. 129, L. 1921; re-en. Secs. 7352, 7353, R.C.M. 1921; re-en. Secs. 7352, 7353, R.C.M. 1935; R.C.M. 1947, 89-2808, 89-2809.

85-8-423. Assessments against annexed lands. The commissioners shall, after the time for appeal is past, assess against each parcel, tract, and easement of the annexed lands reasonable and just benefits and shall assess against these lands for construction and repairs such sums as are just. If lands similarly situated and benefited are found in the district, the annexed lands shall be assessed a like sum of benefits and damages as the similar lands in the district to which they are sought to be annexed and a sum for construction of the work, which shall be equal to all sums assessed, for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in the district.

History: En. Sec. 90, Ch. 129, L. 1921; re-en. Sec. 7354, R.C.M. 1921; re-en. Sec. 7354, R.C.M. 1935; amd. Sec. 46, Ch. 460, L. 1977; R.C.M. 1947, 89-2810.

85-8-424. Confirmation of commissioners' report of assessments. The commissioners shall file their report and assessments in court. The court shall, by order, require said owners to show cause at a time and place therein fixed, not less than 20 days after the service of said order, why said report and assessments should not be confirmed. On the hearing of said order to show cause, if a jury trial is demanded, the court shall frame issues on benefits and damages and impanel a jury or adjourn the hearing thereon until some term of court when a jury is in attendance and take the verdict of a jury on such issues. All other issues arising on said report shall be tried by the court. The court shall order all necessary amendments of said report and make written findings of fact and, when said report is amended, shall by order confirm the same.

History: En. Sec. 91, Ch. 129, L. 1921; re-en. Sec. 7355, R.C.M. 1921; re-en. Sec. 7355, R.C.M. 1935; R.C.M. 1947, 89-2811.

Cross-References

Assessment of unassessed, benefited lands, 85-8-618.

Part 5

Bonds and Revenue

85-8-501. Authority to borrow money and issue notes or bonds. The commissioners may:

(1) borrow money, not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in 85-8-367 and 85-8-368, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair or for the payment of any indebtedness which they may have lawfully incurred; and

(2) issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond 1 year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(1).

85-8-502. Resolution for issuance of notes or bonds. Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds. Said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment, and, if redeemable before maturity, the date thereof; shall prescribe the denominations, not exceeding $1,000, and form thereof; and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house or trust company's office, to be named in said notes or bonds. Such notes or bonds and the coupons attached thereto shall bear the signatures of the president and the secretary of the drainage district. The corporate seal of the drainage district shall be affixed to each of the notes or bonds.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(2).

85-8-503. Sale of notes or bonds. Upon execution, the notes or bonds shall be deposited with the county treasurer, who shall register the same in a book for that purpose, which shall show the number and amount of each note or bond, its date, the date payable and redeemable, where payable, the person to whom issued. Upon sale of the notes or bonds, the county treasurer shall deliver the same to the person or persons to whom sold, upon their making payment for the same. Said notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement, as they may deem it to the best interests of the district. Said notes or bonds shall not be sold at less than 90% of their face value. Said notes or bonds shall not be held to make the commissioners personally liable but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(3).

85-8-504. Disposition of excess money. In case any moneys derived from bonds sold to pay for the original construction of said improvement, now or hereafter, remain on hand after the work is completed in original construction and paid for and not raised for damages unpaid for, such residue may be used in the maintenance and repair, as provided in this chapter, before making assessments for such maintenance and repair.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(4).

85-8-505. Refunding indebtedness of district. The court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by:

(1) taking up and canceling all of its outstanding notes and bonds, as fast as they become due or before, if the holders thereof will surrender the same; and

(2) issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921; re-en. Sec. 7344, R.C.M. 1921; re-en. Sec. 7344, R.C.M. 1935; amd. Sec. 42, Ch. 234, L. 1971; R.C.M. 1947, 89-2502.

Part 6
Taxes and Assessments

85-8-601. Certification and collection of district taxes. (1) On or before the third Monday in August of each year, the commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not

collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid.

History: (1)En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R.C.M. 1921; re-en. Sec. 7329, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973; Sec. 89-2401, R.C.M. 1947; (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-2401; amd. Sec. 155, Ch. 27, Sp. L. November 1993.

Cross-References

Method of collection of taxes and assessments, 85-7-2136.

85-8-602. Tax collection if lands in several counties. Where lands of any district lie in more than one county, the district taxes or assessments collected in all other counties shall be remitted to the county treasurer of the county wherein the court having jurisdiction of said district is located, on or before January 1 of each year.

History: En. Sec. 66, Ch. 129, L. 1921; re-en. Sec. 7330, R.C.M. 1921; re-en. Sec. 7330, R.C.M. 1935; R.C.M. 1947, 89-2402.

85-8-603. Rules of law applicable to tax collection. The rules of law applying to the collection of taxes and sale of land for taxes shall, unless in conflict with this chapter, apply to the collection and sale of lands for drainage assessments. Delinquent sales of land for unpaid taxes and assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situate, and the right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes. Such drainage district shall be entitled to the benefit of all penalties and interest upon delinquent district assessments.

History: En. Sec. 67, Ch. 129, L. 1921; re-en. Sec. 7331, R.C.M. 1921; re-en. Sec. 7331, R.C.M. 1935; R.C.M. 1947, 89-2403.

Cross-References

Collection of property taxes, Title 15, ch. 16.

Tax sales, Title 15, ch. 17.

85-8-604 through 85-8-610 reserved.

85-8-611. Construction assessments — annual installment. At the time of the confirmation of the assessments as provided in 85-8-347, the court may order the assessment for construction of new work to be paid in not more than 15 annual installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of such notes or bonds of the district as the court grants authority to issue for the construction of new work. The court shall also by such order fix a date on which the first installment of the assessments for construction shall become due, not more than 5 years after the date of the order, and each of the installments shall draw interest at the rate fixed by the court in accordance with law from the date of the order.

History: En. Sec. 61, Ch. 129, L. 1921; re-en. Sec. 7325, R.C.M. 1921; re-en. Sec. 7325, R.C.M. 1935; amd. Sec. 35, Ch. 234, L. 1971; amd. Sec. 42, Ch. 460, L. 1977; R.C.M. 1947, 89-2348.

85-8-612. Lien of assessments — payment of assessments against state lands. (1) From the time of the entry of said order, assessments for construction of new work and additional assessments and interest thereon shall be a lien upon the lands assessed, until paid. Any owner of land or any corporation assessed for construction may, at any time within 30 days after the confirmation of said report, pay into court the amount of the assessment against his land or any tract thereof or against any such corporation. Said payment shall relieve said lands from the lien of said assessment and said corporation from all liability on said assessment.

(2) Upon presentation to the state treasurer of an order of the district court having jurisdiction of the drainage district, properly certified, the department of administration shall draw a warrant on the treasury on the common school fund in favor of the commissioners of the drainage district for the total amount that may be assessed against any lands included in the district, the title to which is in the state of Montana. Upon payment of the warrant, the lands are relieved from the lien created for the costs of construction.

History: En. Sec. 62, Ch. 129, L. 1921; re-en. Sec. 7326, R.C.M. 1921; re-en. Sec. 7326, R.C.M. 1935; R.C.M. 1947, 89-2349; amd. Sec. 32, Ch. 325, L. 1995.

Cross-References

State tax liens, Title 15, ch. 16, part 4.

85-8-613. Assessments against certain corporations. Assessments against all public corporations or any private corporation not owning land within the district shall be payable to the county treasurer wherein the court having jurisdiction of the district is located, on or before September 1 of each year.

History: En. Sec. 68, Ch. 129, L. 1921; re-en. Sec. 7332, R.C.M. 1921; re-en. Sec. 7332, R.C.M. 1935; R.C.M. 1947, 89-2404.

85-8-614. Procedure on failure to certify assessments. When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair or additional assessment against any lands (including improvements where benefited) in said district at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year.

History: En. Sec. 69, Ch. 129, L. 1921; re-en. Sec. 7333, R.C.M. 1921; re-en. Sec. 7333, R.C.M. 1935; amd. Sec. 7, Ch. 409, L. 1973; R.C.M. 1947, 89-2405.

85-8-615. Procedure to levy additional assessments. If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction or if in any year an additional sum is necessary to pay the lawful indebtedness of said drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof; provided, however, that the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, shall, in no event, exceed the total assessments of benefits as provided in 85-8-342. Notice of the hearing of the application for such additional assessment shall be published at least once each week for 3 consecutive weeks in one newspaper published in each county in which said lands, or any part thereof, within said district are situated, which further or additional assessment may be made payable in installments as specified in 85-8-611 and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district.

History: **En. Sec. 74, Ch. 129, L. 1921; re-en. Sec. 7338, R.C.M. 1921; re-en. Sec. 7338, R.C.M. 1935; amd. Sec. 8, Ch. 409, L. 1973; R.C.M. 1947, 89-2410.**

85-8-616. Correction of omissions. Omission to assess benefits, to assess for construction, to make additional assessments, to make assessment for repairs, to award damages to any one or more tracts of land or easements in a drainage district or to assess benefits, assess for construction, assess for repairs, or make additional assessments against any corporation which should have been assessed does not affect the jurisdiction of the court to confirm the report or to render the benefits assessed, the assessments for construction, additional assessments, or assessments for repairs against other lands or assessments against any corporation voidable; but the commissioners of the drainage district shall thereafter, as soon as they discover the omission or as soon as they have notice thereof, either agree with the omitted parties upon the proper assessments and award the damages or assess such benefits, make such assessments for construction, and make such additional assessments against the omitted lands and corporations and award such damages as are just and report the facts, together with such assessments and awards, to the court.

History: **En. Sec. 75, Ch. 129, L. 1921; re-en. Sec. 7339, R.C.M. 1921; re-en. Sec. 7339, R.C.M. 1935; amd. Sec. 43, Ch. 460, L. 1977; R.C.M. 1947, 89-2411.**

85-8-617. Illegal assessments. In case the court decides that any land should not have been assessed for drainage purposes or that any assessment is void, the commissioners of the district shall:

(1) levy an additional assessment on all of the assessable lands, irrigation ditches, railroads, corporations, and individual owners, based on the last assessment of the district approved by the court, sufficient to pay the sum lost to the district by reason of such void assessment; or

(2) pay such sum out of the general fund of the district.

History: **En. Sec. 78, Ch. 129, L. 1921; re-en. Sec. 7342, R.C.M. 1921; re-en. Sec. 7342, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1923; amd. Sec. 6, Ch. 169, L. 1929; R.C.M. 1947, 89-2412.**

85-8-618. Assessment of unassessed, benefited lands. Whenever any lands from which surface or seepage water enters any drain or upon which or through which surface or seepage water has been prevented from flowing because of the construction of any drain have not been included within the drainage district which constructed such drains or drain or the owner of any irrigation ditch or canal from which water seeps, drains, or wastes to, upon, or through lands included within a drainage district has not been assessed for the cost of construction of the drainage system of said drainage district, the commissioners of such district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for their proportionate share of the cost of the drainage system of said drainage district and ask that the owner of any such irrigation ditch or canal be assessed its proportionate share of the costs of construction of such drainage system. Thereupon, the same proceedings as set out in 85-8-421 through 85-8-424 for the determination and levy of assessments against drained lands outside of drainage district receiving benefits from the drainage of said district shall be had to determine the proper assessments, if any, to be levied against said lands and the owner of such irrigation ditch or canal to aid in payment of costs of construction.

History: En. Sec. 7364A by Sec. 7, Ch. 169, L. 1929; re-en. Sec. 7364.1, R.C.M. 1935; R.C.M. 1947, 89-2601.

85-8-619. Assessments to have effect of judgment. Each and every sum assessed for construction, for additional assessment, or for repairs against any land or against any corporation, as soon as such assessment is confirmed by the court, shall be and is declared to be a judgment of the district court in favor of said drainage district and against said land or corporation. Unless some other method of collection is herein provided, the judgment shall be collected in the same manner as any other money judgment is collected; provided, that whenever said assessment is a lien upon land, it shall only be collected out of said land on which it is a lien.

History: En. Sec. 93, Ch. 129, L. 1921; re-en. Sec. 7357, R.C.M. 1921; re-en. Sec. 7357, R.C.M. 1935; R.C.M. 1947, 89-2813.

85-8-620. Bonds not to be affected by assessment change. No bonds or other money obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

History: En. Sec. 94, Ch. 129, L. 1921; re-en. Sec. 7358, R.C.M. 1921; re-en. Sec. 7358, R.C.M. 1935; R.C.M. 1947, 89-2814.

85-8-621. Renumbered 85-8-803 by Code Commissioner, 1983.

85-8-622. Agreement of landowners to omitted assessments. In case of omission to assess any corporation or land that should be assessed for benefits, construction, repairs, or additional assessments or to award damages, said omitted party and the owner of omitted land may in writing agree with the commissioners of said district what the assessment should be against said land or against said corporation or what said damages should be, and such agreement shall be acknowledged and witnessed, as provided above for waivers, and be filed in the court.

History: En. Sec. 97, Ch. 129, L. 1921; re-en. Sec. 7361, R.C.M. 1921; re-en. Sec. 7361, R.C.M. 1935; R.C.M. 1947, 89-2817.

85-8-623. Assessments not to be obstructed by preliminary defects. The collection of any assessments made by the commissioners for construction and confirmed by the court shall not be restrained or obstructed by reason of any omission, imperfection, or defect in the organization of any district or in any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within 30 days after the entry of such order.

History: En. Sec. 99, Ch. 129, L. 1921; re-en. Sec. 7363, R.C.M. 1921; re-en. Sec. 7363, R.C.M. 1935; re-en. Sec. 7363, R.C.M. 1935; R.C.M. 1947, 89-2819.

85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in 13-1-401(4).

(b) The manner of conducting the election shall be as provided in 85-8-302 and as nearly as practicable in accordance with the provisions of the general election laws of the state, except that no registration may be required.

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and the election administrator or deputy election administrator shall give them notice as provided in 13-1-401(4).

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary must be included in the notice provided for by 13-1-401(4). In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election.

History: (1)En. Sec. 10, Ch. 409, L. 1973; amd. Sec. 1, Ch. 147, L. 1974; Sec. 89-2330.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 409, L. 1973; Sec. 89-2330.2, R.C.M. 1947; (3)En. 89-2330.3 by Sec. 2, Ch. 147, L. 1974; amd. Sec. 27, Ch. 342, L. 1977; Sec. 89-2330.3, R.C.M. 1947; R.C.M. 1947, 89-2330.1, 89-2330.2, 89-2330.3; amd. Sec. 12, Ch. 326, L. 1979; amd. Sec. 18, Ch. 400, L. 1979; amd. Sec. 194, Ch. 575, L. 1981; amd. Sec. 3, Ch. 24, L. 1985; amd. Sec. 150, Ch. 370, L. 1987.

Part 7
Flood Control and Planning

Part Cross-References

Floodplain and floodway management, Title 76, ch. 5.

85-8-701. Purpose of part. (1) The purpose of this part is to confer certain additional powers on drainage districts already created or to be created under the laws of the state of Montana for the purposes of cooperating with the government of the United States and landowners in flood prevention and the conservation, development, utilization, and disposal of water for the further development of the economy of this state and for the promotion of the public health and welfare.

(2) The purpose of this part is to enable existing drainage districts or newly created drainage districts as provided herein to enter into cooperative agreements and programs to carry out the purposes of Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water. This part is to be given a liberal construction to the end that these purposes may be carried out, and to this end all political subdivisions of the state of Montana, all agencies and departments of the state government, and all soil conservation districts are authorized to cooperate with, expend funds for, and enter into agreements with drainage districts and any agencies of the United States government for the purpose of carrying out the provisions of this part and Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water.

(3) None of the additional powers granted by this part shall be exercised except for the purpose of participating in projects or programs authorized under Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Secs. 1, 5, Ch. 3, L. 1957; R.C.M. 1947, 89-2821, 89-2825.

85-8-702. Additional powers. To the end that soil and water conservation measures may be improved, flood prevention and drainage programs strengthened, and the land and water economy of the state stabilized, the following additional powers are conferred upon presently existing drainage districts or new districts as created and established under this chapter and laws amendatory thereof and supplementary thereto:

(1) to carry out necessary measures for the prevention of floodwater and sediment damages and for the conservation, development, utilization, and disposal of water and to adopt necessary regulations, policies, and procedures to accomplish these ends, subject to the approval of the district court and on proper notice to interested parties as is provided for in the general statutes pertaining to drainage districts;

(2) to cooperate and enter into agreements to carry out the purposes of this part with (and to receive financial and other assistance from) state agencies and political subdivisions of the state, other organizations created under state laws, and the government of the United States and agencies thereof and to

enter into agreements with (and to accept contributions from) private landowners for the purposes of this part;

(3) to construct, operate, and maintain such works of improvement, including structures and related measures, as are needed to carry out their broadened purposes as set forth herein, subject to the approval of the district court and on proper notice to interested parties as set forth in this chapter;

(4) to acquire lands, easements, and rights-of-way for sites for structures and for the flowage or impoundment of waters, such acquisitions for such purposes to be accomplished in the same manner and through the same powers and procedures as provided for under this chapter;

(5) to enlarge their boundaries to permit the construction of additional needed works of improvement or to construct additional needed works of improvement outside their boundaries, subject to approval of the district court and on proper notice to interested parties in the manner set forth in this chapter;

(6) to make assessments and issue bonds for carrying out the purposes of this part and for constructing, maintaining, and operating any structures or improvements established as provided herein, such assessments and bond issues to be made in the same manner and through the same procedures as under this chapter, including the right to extend annual installments for repayment of construction costs over a period of not more than 50 years and subject to the approval of the district court in the same manner and on the same notice to the interested parties as in the first instance of approving assessments, bond issues, and benefits.

History: En. Sec. 2, Ch. 3, L. 1957; R.C.M. 1947, 89-2822.

85-8-703. Petition for additional powers. Before the additional powers granted by this part shall become applicable to any presently existing drainage district in this state, the commissioners of such district shall file a petition in the district court requesting such additional powers as set forth herein and proper notice shall be given to interested landowners in the same manner as in the first instance of creation of the district. Proceedings shall be conducted, insofar as possible, in accordance with the procedures set forth for determining whether or not the district shall be created in the first instance, and the district court shall render its decree or order accordingly.

History: En. Sec. 3, Ch. 3, L. 1957; R.C.M. 1947, 89-2823.

85-8-704. Organization of areas not within existing districts. In areas not presently within the boundaries of an existing drainage district, the landowners may proceed to organize a drainage district for carrying out the purposes of this part, and such organization of such district may be carried out for said purposes according to the procedure for organization of such districts set forth in this chapter. After organization such districts shall have all the powers vested by law in such districts.

History: En. Sec. 4, Ch. 3, L. 1957; R.C.M. 1947, 89-2824.

Part 8
Miscellaneous Provisions

85-8-801. Continuation of existing districts. All drain districts of the state of Montana organized prior to March 1, 1921, and continued in existence pursuant to section 100, Chapter 129, Laws of 1921, shall continue their existence as drain districts under and pursuant to all of the provisions of drainage district laws, and the commissioners of such drain districts shall have all the power and authority conferred by the drainage district laws upon the commissioners of drainage districts.

History: En. Sec. 7364B by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.2, R.C.M. 1935; amd. Sec. 44, Ch. 460, L. 1977; R.C.M. 1947, 89-2701.

85-8-802. Dividing older districts into three divisions. Ten percent of the adult owners or legally authorized agents or representatives of minor owners of lands within any drainage district heretofore created and organized and in existence on February 27,1925, may file a petition with the proper district court to have such district divided into divisions. Such court must thereupon make an order setting a day for hearing such petition and cause a copy of such order to be served on each of the commissioners of such district at least 5 days before the date set for such hearing. On the day fixed in such order (or on any day to which such hearing may be regularly continued) the court must hear such petition and, after such hearing, must make an order dividing such district into three divisions, as nearly equal in area as possible.

History: En. Sec. 16, Ch. 129, L. 1921; re-en. Sec. 7280, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1925; re-en. Sec. 7280, R.C.M. 1935; R.C.M. 1947, 89-2217(part).

85-8-803. Waiver of defective service. In case of failure to serve any notice of any proceeding or hearing provided for in this chapter upon any person or corporation, such person or corporation may appear in open court and waive such defect of service or may waive it by filing in court or delivering to the commissioners of the drainage district, to be filed in court, a written waiver of such defect, in which waiver said defect shall be described, which waiver shall be signed by such party and witnessed and acknowledged before a proper officer having power to take acknowledgments of deeds.

History: En. Sec. 96, Ch. 129, L. 1921; re-en. Sec. 7360, R.C.M. 1921; re-en. Sec. 7360, R.C.M. 1935; R.C.M. 1947, 89-2816; MCA 1981, 85-8-621; redes. 85-8-803 by Code Commissioner, 1983.

CHAPTER 9

CONSERVANCY DISTRICTS

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Part 1
General Provisions

85-9-101. Policy considerations. To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by this chapter are a public use and will:

(1) be essentially for the public benefit and advantage of the people of Montana;

(2) benefit all industries of the state;

(3) encourage economic growth;

(4) indirectly benefit the state by increasing property valuations;

(5) directly benefit municipalities by providing adequate supplies of water for domestic uses;

(6) directly benefit lands irrigated or drained by works constructed;

(7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;

(8) enhance fish and wildlife habitat;

(9) improve recreational facilities; and

(10) promote the comfort, safety, and welfare of the people of Montana.

History: En. Sec. 1, Ch. 100, L. 1969; R.C.M. 1947, 89-3401.

85-9-102. Purpose of chapter. The purpose of this chapter is to enable the formation of conservancy districts comprised of area in one or more counties to promote the following purposes:

(1) prevent and control floods, erosion, and sedimentation;

(2) provide for regulation of stream flows and lake levels;

(3) improve drainage and to reclaim wet or overflowed lands;

(4) promote recreation;

(5) develop and conserve water resources and related lands, forest, fish, and wildlife resources;

(6) further provide for the conservation, development, and utilization of land and water for beneficial uses, including but not limited to domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

History: En. Sec. 2, Ch. 100, L. 1969; R.C.M. 1947, 89-3402.

Cross-References

Policy of state to conserve water, 75-5-101.

85-9-103. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

(9) "Notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if no newspaper is published in a county, a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice shall appear not less than 5 days prior to any hearing or election held under this chapter.

(10) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner, nor may he affect the previous title for purposes of this chapter.

(11) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, including the state of Montana or the United States, foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(12) "Taxable valuation" is the value as defined in 15-8-111 and does not mean assessed valuation.

(13) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977; R.C.M. 1947, 89-3403(part).

Cross-References

Hearing by Department, 85-9-203.

Merger of districts, 85-9-501.

Notice of public budget hearing, 85-9-602.

Issuance of bonds — resolution and election, 85-9-623.

85-9-104. Limitations. (1) This chapter may not be construed to grant to the district the power to generate, distribute, or sell electric energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, the department of environmental quality, or the department of fish,

wildlife, and parks, but are supplementary to and in aid of those rights, powers, duties, and functions.

History: (1)En. Sec. 48, Ch. 100, L. 1969; Sec. 89-3448, R.C.M. 1947; (2)En. Sec. 49, Ch. 100, L. 1969; amd. Sec. 193, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 50, Ch. 460, L. 1977; Sec. 89-3449, R.C.M. 1947; R.C.M. 1947, 89-3448, 89-3449; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 480, Ch. 418, L. 1995.

Part 2

Creation of Districts

85-9-201. Preliminary survey — petition. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written petition to the department.

(2) The petition shall:

(a) be signed by at least 10% of the registered voters residing within the boundaries of the proposed conservancy district;

(b) generally describe the proposed boundaries of the district;

(c) specify the purpose or purposes of the district;

(d) list the works contemplated;

(e) request that a preliminary survey be initiated.

(3) The department may initiate a preliminary survey without any prior written petition.

History: En. Sec. 4, Ch. 100, L. 1969; amd. Sec. 1, Ch. 19, L. 1973; R.C.M. 1947, 89-3404.

85-9-202. Action by department upon receipt of request. (1) Within 11 days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or together with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) within 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, the department of fish, wildlife, and parks, the department of environmental quality, and other affected state and federal resource agencies for their comments.

History: En. Sec. 5, Ch. 100, L. 1969; amd. Sec. 1, Ch. 302, L. 1971; amd. Sec. 184, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 89-3405; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 481, Ch. 418, L. 1995.

85-9-203. Hearing by department. (1) Upon receipt of the preliminary survey report, the applicants or any one of them may request the department to hold a hearing. The department shall hold the hearing sooner than 61 days after receipt of the request. Notice of the hearing shall be given in accordance with 85-9-103(9).

(2) If the department itself initiated the preliminary survey, it may hold a hearing without being requested to do so.

History: En. Sec. 6, Ch. 100, L. 1969; amd. Sec. 185, Ch. 253, L. 1974; R.C.M. 1947, 89-3406.

85-9-204. Feasibility study and report — adjustment of proposed boundaries. After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report and, within 1 year after receipt of the request, send copies to the applicants, if any, the department of fish, wildlife, and parks, the department of environmental quality, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report must describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land that would receive no direct or indirect benefits from the proposed district.

History: En. Sec. 7, Ch. 100, L. 1969; amd. Sec. 1, Ch. 303, L. 1971; amd. Sec. 186, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 89-3407; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 482, Ch. 418, L. 1995.

85-9-205. Procedure for organization of district. If in the opinion of the department the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is the following:

(1) The department shall file a petition requesting organization with the court.

(2) The petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be $100,000 or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least 51% of the land outside the limits of an incorporated municipality and not fewer than 5% or 100, whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969; amd. Sec. 187, Ch. 253, L. 1974; R.C.M 1947, 89-3408.

85-9-206. Court hearing on petition — election — limits on court jurisdiction. (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court finds that the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands that will not be benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the election administrator to conduct the election in accordance with the provisions of Title 13;

(d) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization. The election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with a regular or primary election.

(3) This chapter does not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation and questions of right growing out of or in any way connected with a priority of appropriation is expressly excluded from this chapter and must be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969; R.C.M. 1947, 89-3409; amd. Sec. 373, Ch. 571, L. 1979; amd. Sec. 69, Ch. 387, L. 1995; amd. Sec. 14, Ch. 234, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 234 in (2), in second sentence, inserted "conducted by mail ballot, as provided in Title 13, chapter 19, or must be". Amendment effective April 11, 1997.

85-9-207. Corporate nature of district. A district is a public corporation and a political subdivision of the state.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977; R.C.M. 1947, 89-3403(part).

85-9-208. Filing of documents after organization. Sooner than 31 days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, the department, and to the county clerk and recorder in each of the counties having lands in the district copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969; amd. Sec. 188, Ch. 253, L. 1974; R.C.M. 1947, 89-3410.

85-9-209. Reimbursement of expenses of organizing election. If organized, the district shall reimburse the county or counties for the expenses incurred in the organizing election. The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district.

History: En. Sec. 11, Ch. 100, L. 1969; amd. Sec. 1, Ch. 18, L. 1973; R.C.M. 1947, 89-3411.

Part 3

Dissolution of Districts

85-9-301. Procedure for dissolution of district. (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution;

(b) a petition signed by 20% of the electors representing 10% of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for 1 year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors or by the petitioners if the directors remain inactive.

(3) Not more than one resolution or petition may be presented to the court in any 24-month period, and no such petition may be presented during the first 24 months after a district's initial organization.

History: En. Sec. 42, Ch. 100, L. 1969; R.C.M. 1947, 89-3442.

85-9-302. Dissolution election. (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by 85-9-422.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: En. Sec. 43, Ch. 100, L. 1969; R.C.M. 1947, 89-3443.

85-9-303. Termination plan — court jurisdiction. (1) In the event the vote is for dissolution, any qualified elector or the board of directors of the district may, within the time fixed by the court, present a written plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: En. Sec. 44, Ch. 100, L. 1969; R.C.M. 1947, 89-3444.

85-9-304. Appointment of receiver — assessments. (1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of any receiver, all the authority of the directors shall cease. However, until dissolution, the receiver shall have authority to levy assessments for:

(a) the payment of obligations of the district;

(b) the costs of termination.

(3) The directors or, if there is a receiver, then the receiver, with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

History: En. Sec. 45, Ch. 100, L. 1969; R.C.M. 1947, 89-3445.

85-9-305. Entry of dissolution order. (1) The court shall enter an order dissolving the district when it appears to the satisfaction of the court that:

(a) all obligations of the district have been discharged;

(b) all the costs of termination have been paid.

(2) A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969; R.C.M. 1947, 89-3446.

85-9-306. County general funds to receive funds remaining after dissolution. All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969; R.C.M. 1947, 89-3447.

Part 4

Organization and Procedure

85-9-401. District directors — appointment, term of office, vacancies, first meeting, and bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors, appoint persons who are electors within the district to membership on the board of directors, and fix their compensation. The number shall not be less than 3 or more than 11 persons. In fixing the number and making the appointments the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors but not to be less than 3 or to exceed 11.

(2) fix the terms of office so that approximately one-third of the directors first appointed shall serve for 1 year, approximately one-third shall serve 2 years, and the remainder shall serve 3 years. All succeeding terms shall be 3 years. Unless excused for good cause, a director who misses three consecutive regular meetings has vacated his position.

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond which each member of the directors shall furnish at the expense of the district, conditioned upon his faithful performance of his duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969; R.C.M. 1947, 89-3412.

85-9-402. Officers and meetings. (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings.

All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the chairman or any two members and (except in case of emergency) upon at least 3 days' notice of the time, place, and purpose of the meeting.

History: **En. Sec. 13, Ch. 100, L. 1969; R.C.M. 1947, 89-3413.**

85-9-403. Directors' powers — conduct of business. On behalf of the district, the directors may:

(1) adopt an official seal;

(2) sue and be sued;

(3) provide for reimbursing of their members for actual expenses;

(4) merge with other special districts as hereinafter provided;

(5) call upon the county attorney or attorney general for such legal services as the district may require or, in the discretion of the directors, employ private legal counsel.

History: **En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(1), (2), (5), (9), (11).**

85-9-404. Directors' powers to adopt rules. On behalf of the district, the directors may adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request.

History: **En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(3).**

85-9-405. Directors' powers over property. On behalf of the district, the directors may:

(1) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;

(2) appropriate water and initiate or participate in the adjudication of streams;

(3) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;

(4) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise lands, water, water rights, or rights-of-way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district.

(5) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

(6) allocate or reallocate unused waters of the district.

History: **En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(4), (6) thru (8), (10), (18).**

85-9-406. Directors' powers over finance. On behalf of the district, the directors may:

(1) borrow money and incur indebtedness and issue bonds to finance works as provided by this chapter;

(2) in addition to all voted indebtedness, borrow money as necessary, but the amount shall not at any one time exceed 5% of the taxable valuation of real property in the district;

(3) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(4) use any surplus funds to purchase outstanding bonds;

(5) refund bonded indebtedness incurred by the district as provided by this chapter;

(6) after a hearing held in accordance with 85-9-602, make assessments sufficient to meet the budgetary requirements for the coming year.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(13) thru (15), (22) thru (24).

85-9-407. Fees and charges. On behalf of the district, the directors may:

(1) fix and revise, from time to time, and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(2) withhold the delivery of water upon which there are any defaults or delinquencies of payment and otherwise dispose of that water while the default or delinquency continues.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(12), (17).

Cross-References

Assessments, 85-9-601.

85-9-408. Contracts and agreements by directors. On behalf of the district, the directors may:

(1) contract for service, for water furnished, or for the sale of water with any person;

(2) cooperate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies and exercise all necessary or convenient powers in connection therewith;

(3) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in 85-9-422. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at 90% of their par value to secure the amount to be paid by the district to the United States under any contract. The interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States.

(4) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects, and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in 85-9-422. The directors may

do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service.

(5) make contracts incidental to the performance of the district's functions and employ and fix the compensation of employees, agents, or consultants as are deemed necessary, including but not limited to a manager, attorneys, accountants, engineers, construction and financial experts;

(6) cooperate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(16), (19) thru (21), (25), (26).

85-9-409. Participation in federal programs. A district organized under this chapter, by itself or in conjunction with others as a sponsoring organization, may participate in all federal programs, including but not limited to the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

History: En. Sec. 15, Ch. 100, L. 1969; amd. Sec. 189, Ch. 253, L. 1974; R.C.M. 1947, 89-3415.

85-9-410. Condemnation authorized. The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969; R.C.M. 1947, 89-3420.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

85-9-411. Annual report of directors' activities. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the department. Reports shall be in the form and contain the information prescribed by the department.

History: En. Sec. 21, Ch. 100, L. 1969; amd. Sec. 190, Ch. 253, L. 1974; R.C.M. 1947, 89-3421.

85-9-412 through 85-9-420 reserved.

85-9-421. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county, and school district taxes are electors and shall be entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;

(c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners or a guardian, executor, administrator, trustee, or purchaser under contract of sale may be required to show his authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969; R.C.M. 1947, 89-3423.

Cross-References

Definitions, 85-9-103.

85-9-422. Election procedures. The election procedures after organization will conform to the requirements of Title 13.

History: En. Sec. 24, Ch. 100, L. 1969; R.C.M. 1947, 89-3424; amd. Sec. 374, Ch. 571, L. 1979.

Cross-References

Dissolution election, 85-9-302.

Contracts and agreements by directors, 85-9-408.

Issuance of bonds — resolution and election, 85-9-623.

85-9-423. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 25, Ch. 100, L. 1969; amd. Sec. 49, Ch. 460, L. 1977; R.C.M. 1947, 89-3425.

Part 5

Alteration of Districts

85-9-501. Merger of districts. (1) In case two or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this chapter would be served by the merging of the districts and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the department.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing, and the clerk shall give notice as specified in 85-9-103(9), as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts or any of them could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this chapter. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization, or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

History: En. Sec. 38, Ch. 100, L. 1969; amd. Sec. 192, Ch. 253, L. 1974; R.C.M. 1947, 89-3438.

85-9-502. Annexation of property. To annex real property to the district, the procedure is the following:

(1) The directors shall petition the court.

(2) The petition shall:

(a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;

(b) describe the benefits to accrue to the real property as a result of the annexation.

(3) The court shall:

(a) give notice and hold a hearing on the petition;

(b) upon good cause shown, order or deny the annexation.

History: En. Sec. 39, Ch. 100, L. 1969; R.C.M. 1947, 89-3439.

85-9-503. Preannexation bonds. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

History: En. Sec. 40, Ch. 100, L. 1969; R.C.M. 1947, 89-3440.

85-9-504. Procedure to exclude lands. Any territory included within any district formed under the provisions of this chapter and not benefited in any manner by such district or its inclusion therein may be excluded therefrom. The procedure for exclusion consists of the following:

(1) A petition for exclusion shall be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is in the proposed exclusion; shall set forth that such territory is not benefited in any manner by the district or its continued inclusion therein; and shall request that such territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a

deposit of $100 to meet the costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.

(4) Upon the filing of such petition with the secretary of the district, the secretary shall duly call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969; R.C.M. 1947, 89-3441.

Part 6

Finance

85-9-601. Assessments. (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to 85-9-407(1) will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than 2 mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to 3 mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.

(4) All assessments have the same force and effect as other liens for taxes, and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in 85-9-624, approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969; R.C.M. 1947, 89-3416.

85-9-602. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in 85-9-103(9) of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

(a) review the present budget;

(b) present the budget for the next year;

(c) hear and consider protests from any elector;

(d) adopt the budget for the next year;

(e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969; R.C.M. 1947, 89-3417.

Cross-References

Directors' powers over finance, 85-9-406.

85-9-603. Directors to provide financial information. (1) Before the second Monday in July of each year, the directors shall provide the department of revenue and the county treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts; and

(c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to the department of revenue and each of the affected county treasurers.

History: En. Sec. 18, Ch. 100, L. 1969; R.C.M. 1947, 89-3418; amd. Sec. 156, Ch. 27, Sp. L. November 1993.

85-9-604. Collection and investment of assessments. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one county, all assessments collected must be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or the national credit union administration or to invest in direct obligations of the United States government payable within 180 days from the time of investment. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn. However, 5% of the interest must be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969; R.C.M. 1947, 89-3419; amd. Sec. 17, Ch. 421, L. 1985; amd. Sec. 81, Ch. 10, L. 1993.

85-9-605 through 85-9-610 reserved.

85-9-611. Repealed. Sec. 13, Ch. 179, L. 1995.

History: En. Sec. 22, Ch. 100, L. 1969; amd. Sec. 191, Ch. 253, L. 1974; amd. Sec. 53, Ch. 213, L. 1975; R.C.M. 1947, 89-3422; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

85-9-612 through 85-9-620 reserved.

85-9-621. Issuance of bonds — term and multipurpose bonds. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this chapter for the cost of works. Bonds issued shall be for a maximum term of not to exceed 40 years. Bonds for more than one purpose may be sold as a single issue.

History: En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971; R.C.M. 1947, 89-3426.

85-9-622. Issuance of bonds — determination of amount. In determining the amount of bonds to be issued, the directors may include:

(1) all costs of works;

(2) all costs and estimated costs of issuance of the bonds;

(3) interest which they estimate will accrue on money borrowed during the construction period and for 6 months after the period.

History: En. Sec. 27, Ch. 100, L. 1969; R.C.M. 1947, 89-3427.

85-9-623. Issuance of bonds — resolution and election. When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution that includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate that the bonds will bear;

(d) whether the bonds will be repaid from revenue, assessments, or both;

(2) give notice, as provided in 85-9-103(9), that must include the resolution adopted by the directors and the location of polling places unless the election is conducted by mail ballot, as provided in Title 13, chapter 19; and

(3) hold an election as provided by 85-9-422.

History: En. Sec. 28, Ch. 100, L. 1969; R.C.M. 1947, 89-3428; amd. Sec. 70, Ch. 387, L. 1995; amd. Sec. 15, Ch. 234, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 234 in (2), at end, inserted "unless the election is conducted by mail ballot, as provided in Title 13, chapter 19"; and made minor changes in style. Amendment effective April 11, 1997.

85-9-624. Issuance of bonds — approval and assessments. (1) For a bond issue to be approved, 40% of the qualified electors must vote thereon and 60% of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments necessary to pay the principal and interest on bonds issued, as provided in 85-9-601.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: En. Sec. 29, Ch. 100, L. 1969; R.C.M. 1947, 89-3429.

85-9-625. Issuance of bonds — details of sale. (1) If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders and may sell at private sale any or all bonds not sold on bids.

(2) The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board shall reserve the right to reject any and all bids and to sell the said bonds at private sale.

History: En. Sec. 30, Ch. 100, L. 1969; R.C.M. 1947, 89-3430.

85-9-626. Tax exempt status. Bonds issued under this chapter have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 31, Ch. 100, L. 1969; R.C.M. 1947, 89-3431.

85-9-627. Interim receipts — negotiability. Pending preparation of the bonds sold under this chapter, receipts or certificates may be issued to purchasers in the form and with provisions as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 32, Ch. 100, L. 1969; R.C.M. 1947, 89-3432.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

85-9-628. Bond registration — copy to county. (1) When duly executed, all bonds issued under this chapter shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration shall show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

History: En. Sec. 33, Ch. 100, L. 1969; R.C.M. 1947, 89-3433.

85-9-629. Disposition and investment of sale proceeds. (1) Proceeds from the sales of bonds must be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds must be paid by the county treasurer on written order of the directors. Proceeds may only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds that is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or the national credit union administration or to invest in direct obligations of the United States government. The obligations must be payable within not to exceed 180 days from the time of deposit or investment.

History: En. Sec. 34, Ch. 100, L. 1969; R.C.M. 1947, 89-3434; amd. Sec. 18, Ch. 421, L. 1985; amd. Sec. 82, Ch. 10, L. 1993.

85-9-630. Refunding bonds. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this chapter.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half of the term or 10 years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

History: En. Sec. 35, Ch. 100, L. 1969; R.C.M. 1947, 89-3435.

85-9-631. Bond retirement fund. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds, may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this chapter, to the extent consistent with the resolution authorizing the outstanding bonds.

History: En. Sec. 36, Ch. 100, L. 1969; R.C.M. 1947, 89-3436.

85-9-632. Revolving funds. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease, and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

History: En. Sec. 37, Ch. 100, L. 1969; R.C.M. 1947, 89-3437.

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

DAM SAFETY ACT

Part 1 — General Provisions

85-15-101. Renumbered 85-15-207 by Code Commissioner, 1985.
85-15-102. Renumbered 85-15-208 by Code Commissioner, 1985.
85-15-103. Repealed.
85-15-104. Renumbered 85-15-107 by Code Commissioner, 1985.
85-15-105. Short title.
85-15-106. Definitions.
85-15-107. Exemptions.
85-15-108. Entry upon land.
85-15-109. Legal assistance.
85-15-110. Rules.
85-15-111 through 85-15-114 reserved.
85-15-115. Purpose.

Part 2 — Construction, Inspection, and Repair of Dams

85-15-201. Renumbered 85-15-306 by Code Commissioner, 1985.
85-15-202. Renumbered 85-15-307 by Code Commissioner, 1985.
85-15-203. Renumbered 85-15-308 by Code Commissioner, 1985.
85-15-204. Renumbered 85-15-309 by Code Commissioner, 1985.
85-15-205. Renumbered 85-15-310 by Code Commissioner, 1985.
85-15-206. Renumbered 85-15-311 by Code Commissioner, 1985.
85-15-207. Dams and reservoirs — how constructed.
85-15-208. Construction in a secure manner.
85-15-209. High-hazard dam — determination.
85-15-210. Preparation and approval of plans.
85-15-211. Inspection and reports during construction.
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85-15-213. Periodic inspections after construction.
85-15-214. Requested inspections — costs — limitations against unsafe structures.

85-15-215. Emergency repairs or breaching.
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Part 3 — Court Proceedings

85-15-301. Renumbered 85-15-402 by Code Commissioner, 1985.
85-15-302. Renumbered 85-15-403 by Code Commissioner, 1985.
85-15-303. Renumbered 85-15-404 by Code Commissioner, 1985.
85-15-304. Renumbered 85-15-501(2) by Code Commissioner, 1985.
85-15-305. Liability of owners for damage.
85-15-306 through 85-15-311. Repealed.

Part 4 — Local Government Proceedings

85-15-401. Municipality or county prohibited from regulation.
85-15-402. Repealed.
85-15-403. Repealed.
85-15-404. Repealed.

Part 5 — Penalties

85-15-501. Repealed.
85-15-502. Deposit of penalties and costs.
85-15-503. Civil penalty.

Part 1
General Provisions

85-15-101. Renumbered 85-15-207 by Code Commissioner, 1985.

85-15-102. Renumbered 85-15-208 by Code Commissioner, 1985.

85-15-103. Repealed. Sec. 23, Ch. 501, L. 1985.

History: En. Sec. 2, Ch. 370, L. 1971; amd. Sec. 2, Ch. 209, L. 1973; amd. Sec. 2, Ch. 335, L. 1975; R.C.M. 1947, 89-702.1.

85-15-104. Renumbered 85-15-107 by Code Commissioner, 1985.

85-15-105. Short title. This chapter may be cited as the "Montana Dam Safety Act".

History: En. Sec. 1, Ch. 501, L. 1985.

85-15-106. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means an artificial barrier, including appurtenant works, used to impound or divert water.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means a threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means a change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means a dam or reservoir with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool, the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means a person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or other entity or authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of a dam or reservoir.

(14) "Reservoir" means a valley, basin, coulee, ravine, or other land area that contains impounded water.

History: En. Sec. 2, Ch. 501, L. 1985; amd. Sec. 1, Ch. 366, L. 1991; amd. Sec. 1, Ch. 418, L. 1993.

85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit;

(b) federal dams and reservoirs;

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission; or

(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate.

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency.

(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510.

History: **En. 89-702.2 by Sec. 3, Ch. 335, L. 1975; R.C.M. 1947, 89-702.2; amd. Sec. 5, Ch. 501, L. 1985; Sec. 85-15-104, MCA 1983; redes. 85-15-107 by Code Commissioner, 1985; amd. Sec. 1, Ch. 159, L. 1987; amd. Sec. 2, Ch. 366, L. 1991; amd. Sec. 1, Ch. 612, L. 1993.**

85-15-108. Entry upon land. Any employee or agent of the department authorized by the director of the department may enter upon any land to carry out the purposes of this chapter. The department or its agent shall give reasonable notice to the landowner of the intention to enter upon the land.

History: **En. Sec. 18, Ch. 501, L. 1985.**

85-15-109. Legal assistance. When requested by the department, the attorney general or the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

History: **En. Sec. 19, Ch. 501, L. 1985.**

85-15-110. Rules. The department may adopt rules to implement the provisions of this chapter, including but not limited to rules to:

(1) classify high-hazard dams and reservoirs;

(2) review, approve, and issue permits;

(3) govern inspections under this chapter;

(4) establish safety standards for the design, construction, operation, and maintenance of high-hazard dams and reservoirs;

(5) establish emergency preparedness and warning procedures; and

(6) establish fees commensurate with costs to cover inspections under this chapter.

History: **En. Sec. 20, Ch. 501, L. 1985.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-15-111 through 85-15-114 reserved.

85-15-115. Purpose. (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

History: **En. Sec. 2, Ch. 612, L. 1993.**

Part 2
Construction, Inspection, and Repair of Dams

85-15-201. Renumbered 85-15-306 by Code Commissioner, 1985.

85-15-202. Renumbered 85-15-307 by Code Commissioner, 1985.

85-15-203. Renumbered 85-15-308 by Code Commissioner, 1985.

85-15-204. Renumbered 85-15-309 by Code Commissioner, 1985.

85-15-205. Renumbered 85-15-310 by Code Commissioner, 1985.

85-15-206. Renumbered 85-15-311 by Code Commissioner, 1985.

85-15-207. Dams and reservoirs — how constructed. No person may fill or procure to be filled with water any dam or reservoir that is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein.

History: En. Sec. 2138, Rev. C. 1907; re-en. Sec. 2658, R.C.M. 1921; re-en. Sec. 2658, R.C.M. 1935; R.C.M. 1947, 89-701; amd. Sec. 3, Ch. 501, L. 1985; Sec. 85-15-101, MCA 1983; redes. 85-15-207 by Code Commissioner, 1985.

Cross-References

Fish ladders at dams, 87-1-222.

85-15-208. Construction in a secure manner. No person may construct or cause to be constructed a dam or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

History: En. Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R.C.M. 1921; re-en. Sec. 2659, R.C.M. 1935; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971; amd. Sec. 1, Ch. 209, L. 1973; amd. Sec. 1, Ch. 335, L. 1975; R.C.M. 1947, 89-702; amd. Sec. 4, Ch. 501, L. 1985; Sec. 85-15-102, MCA 1983; redes. 85-15-208 by Code Commissioner, 1985.

85-15-209. High-hazard dam — determination. A person proposing to construct a dam or reservoir with an impounding capacity of 50 acre-feet or more measured at the maximum normal operating pool shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include the information required by the department. The department shall make the determination required by this section within 60 calendar days after a complete application is received by the department.

History: En. Sec. 6, Ch. 501, L. 1985; amd. Sec. 3, Ch. 418, L. 1993.

85-15-210. Preparation and approval of plans. (1) A person may not begin construction of a high-hazard dam as determined under 85-15-209 without first obtaining a construction permit from the department.

(2) An application for a construction permit must be submitted to the department and must contain:

(a) plans and specifications for the proposed construction, prepared by or under the direction of an engineer experienced in dam design and construction; and

(b) other data and information required by the department.

(3) Within 60 calendar days after receipt of the application and any additional information requested by the department, the department shall:

(a) issue a construction permit or deny the application, as filed; or

(b) issue a construction permit upon terms, conditions, or modifications the department considers appropriate.

History: En. Sec. 7, Ch. 501, L. 1985.

85-15-211. Inspection and reports during construction. (1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

(2) Inspections during construction must be performed at intervals necessary to ensure conformity with the permit. The engineer in charge or a qualified designee shall perform the inspections.

(3) The department shall set procedures and requirements for reporting information obtained from, during, or as the result of an inspection. The engineer in charge shall certify all reports to the department.

(4) The department may also inspect the high-hazard dam during construction to ensure conformity with the construction permit.

(5) If the department finds that construction of the high-hazard dam does not conform with the construction permit, it may order that construction be stopped until changes are made in conformity with the permit.

History: En. Sec. 8, Ch. 501, L. 1985; amd. Sec. 4, Ch. 418, L. 1993.

85-15-212. Operating permit. (1) An operation plan must be prepared by the owner and approved by the department prior to operation of the high-hazard dam or reservoir. The operation plan must set forth at a minimum:

(a) a reservoir operation procedure;

(b) a maintenance procedure for the high-hazard dam and appurtenant works; and

(c) emergency procedures and warning plans.

(2) When construction is complete and if the high-hazard dam or reservoir conforms to the construction permit and when an operation plan has been approved, the department shall issue a permit to operate the high-hazard dam or reservoir, containing conditions on the safe operation of the high-hazard dam as it considers necessary.

History: En. Sec. 9, Ch. 501, L. 1985; amd. Sec. 5, Ch. 418, L. 1993.

85-15-213. Periodic inspections after construction. (1) (a) A high-hazard dam, whether or not previously permitted by the department, must be inspected as often as considered necessary by the department, but at least once every 5 years, in order to ensure the continued safe operation of the high-hazard dam.

(b) The department determination that an inspection is necessary more often than once every 5 years, as provided in subsection (1)(a), must be based on substantive evidence, and the reasons for that determination must be stated in writing.

(2) Periodic inspections required by this section must be performed by a qualified engineer, who shall make a report of the inspection to the department. If the department finds that the high-hazard dam conforms to current safety standards, it shall issue or reissue, as the case may be, a permit to continue operation of the high-hazard dam, containing conditions on the safe operation of the high-hazard dam as it considers necessary.

(3) The owner is responsible for inspections required under this section.

History: En. Sec. 10, Ch. 501, L. 1985; amd. Sec. 6, Ch. 418, L. 1993.

85-15-214. Requested inspections — costs — limitations against unsafe structures. (1) At its discretion or upon receipt of an affidavit complaining that the person or property of the complainant is endangered by the construction, maintenance, or operation of any dam or reservoir, the department may order an inspection of the dam or reservoir unless the data, records, and inspection reports on file are adequate to determine that the complaint is not meritorious.

(2) If the complainant continues to request an inspection even though the department has determined under subsection (1) that the complaint is not meritorious, the department may make the inspection upon requiring the complainant to deposit with the department money sufficient to cover the costs of the inspection.

(3) If the dam or reservoir is found to be defective, the department may require the person who owns the dam or reservoir to pay all or part of the expenses of inspection. If the department requires such payment, it shall present a bill of costs to the owner. The costs shall constitute a lien upon the dam, reservoir, and other property of the owner and may be collected by appropriate action in a court of competent jurisdiction.

(4) If the dam or reservoir is not found to be defective after an inspection made under subsection (2), any money deposited by the complainant therefor must be paid to the general fund.

(5) If the inspection discloses defects in the dam or reservoir that, in the judgment of the department, constitute an immediate hazard to life or property, the department may order:

(a) the draining of the dam or reservoir;

(b) the limitation or cessation of use of the dam or reservoir or any defective appurtenant works; or

(c) any other steps to eliminate the hazard until the dam, reservoir, or appurtenant works have been made safe and approved by the department.

History: En. Sec. 11, Ch. 501, L. 1985.

85-15-215. Emergency repairs or breaching. (1) In case of an emergency, the department may take any action necessary to safeguard life and property. This action must be commenced immediately by the owner, or by the department at the owner's expense if the owner fails to act. The department must be notified immediately of any proposed emergency repairs or breaching to be instituted by the owner.

(2) All costs incurred by the department during an emergency must be paid by the owner on receipt of a bill of costs from the department. The costs are a lien upon the dam, reservoir, and other property of the owner and may be collected by appropriate action in a court of competent jurisdiction.

History: En. Sec. 12, Ch. 501, L. 1985.

85-15-216. High-hazard dam permit cancellation. Failure to comply with the provisions of 85-15-209 through 85-15-212 or 85-15-214 subjects the permit to cancellation at any time during the progress of construction or the operation of the high-hazard dam. The department is authorized to cancel any permit if the provisions of 85-15-209 through 85-15-212 or 85-15-214 have not been or are not being complied with, and the cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department.

History: **En. Sec. 15, Ch. 501, L. 1985; amd. Sec. 7, Ch. 418, L. 1993.**

Part 3
Court Proceedings

85-15-301. Renumbered 85-15-402 by Code Commissioner, 1985.

85-15-302. Renumbered 85-15-403 by Code Commissioner, 1985.

85-15-303. Renumbered 85-15-404 by Code Commissioner, 1985.

85-15-304. Renumbered 85-15-501(2) by Code Commissioner, 1985.

85-15-305. Liability of owners for damage. (1) Except as provided in subsections (2) and (3), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed and constructed under the supervision of an engineer and properly maintained is, in the absence of negligence, not liable for damages to persons or property resulting from flows of water from failure of the dam or reservoir.

(3) In addition, the owner of any dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed and constructed under the supervision of an engineer and properly maintained may, without incurring liability, allow passage through the reservoir of inflows without diminution.

History: **En. Sec. 14, Ch. 501, L. 1985; amd. Sec. 3, Ch. 612, L. 1993.**

85-15-306 through 85-15-311. Repealed. Sec. 9, Ch. 418, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

85-15-306. En. Sec. 2140, Rev. C. 1907; amd. Sec. 2, Ch. 168, L. 1917; re-en. Sec. 2660, R.C.M. 1921; re-en. Sec. 2660, R.C.M. 1935; R.C.M. 1947, 89-703; Sec. 85-15-201, MCA 1983; redes. 85-15-306 by Code Commissioner, 1985.

85-15-307. En. Secs. 2141, 2142, 2143, Rev. C. 1907; re-en. Secs. 2661, 2662, 2663, R.C.M. 1921; re-en. Secs. 2661, 2662, 2663, R.C.M. 1935; R.C.M. 1947, 89-704, 89-705, 89-706; amd. Sec. 30, Ch. 526, L. 1983; Sec. 85-15-202, MCA 1983; redes. 85-15-307 by Code Commissioner, 1985.

85-15-308. En. Sec. 2144, Rev. C. 1907; re-en. Sec. 2664, R.C.M. 1921; re-en. Sec. 2664, R.C.M. 1935; R.C.M. 1947, 89-707; Sec. 85-15-203, MCA 1983; redes. 85-15-308 by Code Commissioner, 1985.

85-15-309. En. Sec. 2145, Rev. C. 1907; re-en. Sec. 2665, R.C.M. 1921; re-en. Sec. 2665, R.C.M. 1935; R.C.M. 1947, 89-708; Sec. 85-15-204, MCA 1983; redes. 85-15-309 by Code Commissioner, 1985.

85-15-310. En. Sec. 2146, Rev. C. 1907; re-en. Sec. 2666, R.C.M. 1921; re-en. Sec. 2666, R.C.M. 1935; R.C.M. 1947, 89-709; Sec. 85-15-205, MCA 1983; redes. 85-15-310 by Code Commissioner, 1985.

85-15-311. En. Sec. 2147, Rev. C. 1907; re-en. Sec. 2667, R.C.M. 1921; re-en. Sec. 2667, R.C.M. 1935; R.C.M. 1947, 89-710; Sec. 85-15-206, MCA 1983; redes. 85-15-311 by Code Commissioner, 1985.

Part 4
Local Government Proceedings

85-15-401. Municipality or county prohibited from regulation. No municipality or county may regulate, supervise, or provide for the regulation or supervision of any dam or reservoir in this state or the construction, maintenance, or operation thereof or limit the size of any dam or reservoir or the amount of water that may be stored therein. This chapter does not prevent a municipality or county from adopting ordinances or regulations regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that:

(1) are not within the state's jurisdiction; or

(2) are not subject to regulation by another public agency or body.

History: En. Sec. 13, Ch. 501, L. 1985.

85-15-402. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2148, Rev. C. 1907; re-en. Sec. 2668, R.C.M. 1921; re-en. Sec. 2668, R.C.M. 1935; R.C.M. 1947, 89-711; Sec. 85-15-301, MCA 1983; redes. 85-15-402 by Code Commissioner, 1985.

85-15-403. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2149, Rev. C. 1907; re-en. Sec. 2669, R.C.M. 1921; re-en. Sec. 2669, R.C.M. 1935; R.C.M. 1947, 89-712; Sec. 85-15-302, MCA 1983; redes. 85-15-403 by Code Commissioner, 1985.

85-15-404. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2150, Rev. C. 1907; re-en. Sec. 2670, R.C.M. 1921; re-en. Sec. 2670, R.C.M. 1935; R.C.M. 1947, 89-713; Sec. 85-15-303, MCA 1983; redes. 85-15-404 by Code Commissioner, 1985.

Part 5
Penalties

85-15-501. Repealed. Sec. 9, Ch. 418, L. 1993, and Sec. 5, Ch. 612, L. 1993.

History: (2)En. Sec. 2151, Rev. C. 1907; re-en. Sec. 2671, R.C.M. 1921; re-en. Sec. 2671, R.C.M. 1935; amd. Sec. 64, Ch. 359, L. 1977; R.C.M. 1947, 89-714; Sec. 85-15-304, MCA 1983; redes. 85-15-501(2) by Code Commissioner, 1985; (1)En. Sec. 16, Ch. 501, L. 1985.

85-15-502. Deposit of penalties and costs. All penalties and costs collected under this chapter, other than those collected in a justice's court, must be deposited in the state general fund.

History: En. Sec. 17, Ch. 501, L. 1985; amd. Sec. 61, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

85-15-503. Civil penalty. An owner of a dam with an impounding capacity of 50 acre-feet or greater measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule or order of the department adopted or made pursuant to this chapter is subject to a civil penalty not to exceed $1,000. Each day of violation is a separate offense.

History: En. Sec. 4, Ch. 612, L. 1993.

CHAPTER 16

WHARVES AND DOCKS

Part 1 — Wharves and Docks

85-16-101. Who may build wharves and docks.
85-16-102. Public use of wharves and docks.
85-16-103. Revocation of license.
85-16-104. Land under navigable water.
85-16-105. Repealed.

Part 1
Wharves and Docks

85-16-101. Who may build wharves and docks. Any person or persons owning land bordering upon any of the navigable waters within the state are granted a license and permit to build docks and wharves over, across, and upon the lands under water belonging to the state. Such docks and wharves shall be extended out into such navigable water such distance only as may be necessary to permit all boats, steamboats, and vessels to safely land thereat and discharge and take on their cargoes and passengers.

History: En. Sec. 1, Ch. 38, L. 1909; re-en. Sec. 1605, R.C.M. 1921; re-en. Sec. 1605, R.C.M. 1935; R.C.M. 1947, 89-601.

85-16-102. Public use of wharves and docks. All docks and wharves built on any of the navigable waters of the state shall be public docks and wharves, and all boats, vessels, and steamboats plying such navigable waters shall have a right to land thereat and take on and discharge their cargoes and passengers thereon. The owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat, or vessel a reasonable compensation therefor.

History: En. Sec. 2, Ch. 38, L. 1909; re-en. Sec. 1606, R.C.M. 1921; re-en. Sec. 1606, R.C.M. 1935; R.C.M. 1947, 89-602.

85-16-103. Revocation of license. The license granted in 85-16-101 to build docks and wharves over and upon the lands under the navigable waters of this state conveys no title in such lands, and such license may be revoked by the state of Montana at any time.

History: En. Sec. 3, Ch. 38, L. 1909; re-en. Sec. 1607, R.C.M. 1921; re-en. Sec. 1607, R.C.M. 1935; R.C.M. 1947, 89-603.

85-16-104. Land under navigable water. By the term "land under water" is meant all land under any navigable waters of this state extending from high-water mark, or from the meander line where the shores of lakes or streams have been meandered, to the lake or stream.

History: En. Sec. 4, Ch. 38, L. 1909; re-en. Sec. 1608, R.C.M. 1921; re-en. Sec. 1608, R.C.M. 1935; R.C.M. 1947, 89-604.

85-16-105. Repealed. Sec. 1, Ch. 164, L. 1979.

History: En. Sec. 5, Ch. 38, L. 1909; re-en. Sec. 1609, R.C.M. 1921; re-en. Sec. 1609, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 89-605.

CHAPTERS 17 THROUGH 19
RESERVED

CHAPTER 20
WATER COMPACTS

Part 1 — Yellowstone River Compact

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85-20-201. Fort Peck-Montana compact ratified.

Part 3 — Northern Cheyenne-Montana Compact

85-20-301. Northern Cheyenne-Montana compact ratified.
85-20-302. Consent to federal act and modification of compact.

Part 4 — United States Park Service-Montana Compact

85-20-401. United States National Park Service-Montana compact ratified.
85-20-402. Statutory appropriation of federal funds.

Part 5 — United States Bureau of Land Management — Montana Compact

85-20-501. United States Bureau of Land Management-Montana compact ratified.

Part 6 — Chippewa Cree Tribe—Montana Compact

85-20-601. Chippewa Cree Tribe-Montana compact ratified.

Part 7 — United States Fish and Wildlife Service—Montana Compact

85-20-701. United States Fish and Wildlife Service-Montana compact ratified.

Part 1
Yellowstone River Compact

85-20-101. Approval of compact. The legislative assembly of the state of Montana hereby approves and ratifies the compact designated as the "Yellowstone River Compact", dated at the city of Billings, state of Montana, on the 8th of December, 1950, signed by Fred E. Buck, A.W. Bradshaw, H.W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P.F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R.R. Renne, and Keith W. Trout, as state representatives of the state of Montana on a compact commission between the states of Montana, North Dakota, and Wyoming, which compact is as follows:

YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control, and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the act of congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st congress, First Session), for the attainment of these purposes and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana:

Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury
P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout

For the state of North Dakota:

I. A. Acker
Einar H. Dahl
J. J. Walsh

For the state of Wyoming:

L. C. Bishop
Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith
N. V. Kurtz
Harry L. Littlefield
R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to wit:

Article I

A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

Article II

A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.

B. The terms "commission" and "Yellowstone River Compact commission" mean the agency created as provided herein for the administration of this compact.

C. The term "Yellowstone River basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries and includes the area in Montana known as lake basin but excludes those lands lying within Yellowstone National Park.

D. The term "Yellowstone River system" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone National Park.

E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.

F. The term "interstate tributaries" means the Clarks Fork, Yellowstone River; the Big Horn River (except Little Big Horn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.

H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

I. The term "domestic use" shall mean the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

J. The term "stock water use" shall mean the use of water for livestock and poultry.

Article III

A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone River basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.

B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states and shall compile a report for each year ending September 30 and transmit it to the governors of the signatory states on or before December 31 of each year.

D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission shall cooperate, ex officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.

E. The commission shall have power to formulate rules and regulations and to perform any act which it may find necessary to carry out the provisions of this compact and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.

F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.

G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states and may adopt and use an official seal which shall be judicially noticed.

Article IV

The commission shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gauging and evaporation stations as it finds necessary in connection with its duties.

Article V

A. Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this Article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. Clarks Fork, Yellowstone River

a.	to Wyoming	60%
	to Montana	40%

b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.

2. Big Horn River (exclusive of Little Big Horn River)

a.	to Wyoming	80%
	to Montana	20%

b. The point of measurement shall be below the last diversion from the Big Horn River above its junction with the Yellowstone River, and the inflow of the Little Big Horn River shall be excluded from the quantity of water subject to allocation.

3. Tongue River

a.	to Wyoming	40%
	to Montana	60%

b. The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.

4. Powder River (including the Little Powder River)

a.	to Wyoming	42%
	to Montana	58%

b. The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.

C. The quantity of water subject to the percentage allocations in paragraph B 1, 2, 3, and 4 of this Article V shall be determined on an annual water year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. the total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1 to that given date;

2. the net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1 to that given date;

3. the net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1 to that given date;

4. the quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1 to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone River in the states of Montana and North Dakota below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective states in which situated.

E. There are hereby excluded from the provisions of this compact:

1. existing and future domestic and stock water uses of water, provided that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;

2. devices and facilities for the control and regulation of surface waters.

F. From time to time the commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

priorities of water rights;
acreage irrigated;
acreage irrigable under existing works; and
potentially irrigable lands.

Article VI

Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

Article VII

A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River system not specifically apportioned to or appropriated by such upper state as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state. Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it. And provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.

D. The use of water allocated under Article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities shall be charged as a use by the state in which the use is made. Provided, that such use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

Article VIII

A lower signatory state shall have the right to acquire in an upper state by purchase or through exercise of the power of eminent domain such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article IX

Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article X

No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone River basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with Article V herein.

Article XI

The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XV.

Article XII

This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

Article XIII

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States supreme court, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XIV

The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof have actuated the signatory states in the consummation of this compact, and none of them, or the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

Article XV

This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the congress of the United States.

Article XVI

Nothing in this compact shall be deemed:

(a) to impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities in and to the use of the waters of the Yellowstone River basin or its capacity to acquire rights in and to the use of said waters;

(b) to subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof or to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) to subject any property of the United States of America, its agencies, or instrumentalities to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

Article XVII

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

Article XVIII

No sentence, phrase, or clause in this compact or in any provision thereof shall be construed or interpreted to divest any signatory state or any of the agencies or officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate original, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of Our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck	/S/Fred E. Buck
A. W. Bradshaw	/S/A. W. Bradshaw
H. W. Bunston	/S/H. W. Bunston
John Herzog	/S/John Herzog
John M. Jarussi	/S/John M. Jarussi
Ashton Jones	/S/Ashton Jones
Chris Josephson	/S/Chris Josephson
A. Wallace Kingsbury	/S/A. Wallace Kingsbury
P. F. Leonard	/S/P. F. Leonard
Walter M. McLaughlin	/S/Walter M. McLaughlin
Dave M. Manning	/S/Dave M. Manning
Joseph Muggli	/S/Joseph Muggli
Chester E. Onstad	/S/Chester E. Onstad
Ed F. Parriott	/S/Ed F. Parriott
R. R. Renne	/S/R. R. Renne
Keith W. Trout	/S/Keith W. Trout

Commissioners for the state of North Dakota:

I. A. Acker	/S/I. A. Acker
Einar H. Dahl	/S/Einar H. Dahl
J. J. Walsh	/S/J. J.Walsh

Commissioners for the state of Wyoming:

L. C. Bishop	/S/L. C. Bishop
Earl T. Bower	/S/Earl T. Bower
J. Harold Cash	/S/J. Harold Cash
Ben F. Cochrane	/S/Ben F. Cochrane
Ernest J. Goppert	/S/Ernest J. Goppert
Richard L. Greene	/S/Richard L. Greene
E. C. Gwillim	/S/E. C. Gwillim
E. J. Johnson	/S/E. J. Johnson
Lee K. Keith	/S/Lee K. Keith

N. V. Kurtz	/S/N. V. Kurtz
Harry L. Littlefield	/S/Harry L. Littlefield
R. E. McNally	/S/R. E. McNally
Will G. Metz	/S/Will G. Metz
Mark N. Partridge	/S/Mark N. Partridge
Alonzo R. Shreve	/S/Alonzo R. Shreve
Charles M. Smith	/S/Charles M. Smith
Leonard F. Thornton	/S/Leonard F. Thornton
M. B. Walker	/S/M. B. Walker

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/S/ R. J. Newell
R. J. Newell,
Representative of the
United States of America.

History: En. Sec. 1, Ch. 39, L. 1951; R.C.M. 1947, 89-903.

Cross-References

Definitions, 85-2-801.

85-20-102. Purpose of the part. Under the provisions of the Yellowstone River Compact (Chapter 39, Laws of Montana 1951), all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River existing in each signatory state as of January 1, 1950, have been recognized and shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation. All appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in subsections (2) and (3) of Article V of said compact. The purpose of this part is to provide the means to determine the various appropriative rights to the beneficial uses of water of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, and the quantity of water diverted and used by each such appropriator during each year, to enable the state of Montana and the Yellowstone River Compact commission to comply with and to administer the percentage allocations as provided in subsections (2) and (3) of Article V of said compact.

History: En. Sec. 1, Ch. 92, L. 1953; R.C.M. 1947, 89-905.

85-20-103. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Divert" and "diversion" mean the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(3) "Domestic use" means the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other

personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(4) "Interstate tributaries" or "interstate tributary" means the following described rivers which contribute to the flow of the Yellowstone River in the state of Montana, including all tributaries thereof: the Clarks Fork of the Yellowstone River; the Big Horn River (except the Little Big Horn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(5) "Person" means any person, corporation, partnership, association, municipal corporation, agency, and all others authorized by the laws of the state to appropriate water for beneficial uses.

(6) "Stock water use" means the use of water for livestock and poultry.

History: En. Sec. 2, Ch. 92, L. 1953; amd. Sec. 156, Ch. 253, L. 1974; R.C.M. 1947, 89-906.

85-20-104. Filing written statement with department. (1) Any person claiming an appropriative right to the use of any water of any interstate tributary, which right was acquired after January 1, 1950, shall, within 60 days after February 25, 1953, or before he diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) the name of the claimant and his address;

(b) date of appropriation or the date when the water was first applied to a beneficial use;

(c) the quantity of water claimed;

(d) the name of the stream, river, or other source of water from which the diversion is made, if it has a name, and if it does not, a description identifying the same;

(e) the purpose for which the water is claimed and the place of intended use;

(f) the means of diversion;

(g) whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion;

(h) if a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) whether the appropriation was made from an adjudicated or nonadjudicated stream, river, or other source of water.

(2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf. The affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965; amd. Sec. 157, Ch. 253, L. 1974; amd. Sec. 11, Ch. 460, L. 1977; R.C.M. 1947, 89-907.

85-20-105. Duty to install measuring devices. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone River, which right was acquired subsequently to January 1, 1950, shall, after February 25, 1953, and before he diverts any such water, install in his ditch or other means of diversion a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment such weir or other measuring device or the installation of the same is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device. The claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965; amd. Sec. 158, Ch. 253, L. 1974; R.C.M. 1947, 89-908.

85-20-106. Duty to measure water. Each claimant shall measure all the water being diverted by him and keep accurate records thereof on forms prescribed and furnished by the department and, within 15 days after November 1 of each year, file the written records with the department at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965; amd. Sec. 159, Ch. 253, L. 1974; R.C.M. 1947, 89-909.

85-20-107. Status of prior rights. The rights to the beneficial use of any water of any interstate tributary of the Yellowstone River acquired prior to and including January 1, 1950, shall not be impaired by or subject to this part.

History: En. Sec. 6, Ch. 92, L. 1953; R.C.M. 1947, 89-910.

85-20-108. Domestic and stock uses exempted. Any appropriation of water from any interstate tributary of the Yellowstone River made for domestic or stock water uses will not come within the provisions of this part whenever the capacity of a reservoir for stock water does not exceed 20 acre-feet.

History: En. Sec. 7, Ch. 92, L. 1953; amd. Sec. 12, Ch. 460, L. 1977; R.C.M. 1947, 89-911.

85-20-109. Department to make rules. The department of natural resources and conservation shall adopt and enforce reasonable rules consistent with this part and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965; amd. Sec. 160, Ch. 253, L. 1974; R.C.M. 1947, 89-912; amd. Sec. 483, Ch. 418, L. 1995.

85-20-110. Application to adjudicated and nonadjudicated waters. The provisions of this part shall apply to both adjudicated and nonadjudicated waters of the interstate tributaries of the Yellowstone River.

History: En. Sec. 9, Ch. 92, L. 1953; R.C.M. 1947, 89-913.

85-20-111. Department to make record available. The department shall furnish and make available to the Yellowstone River Compact commission, from the records filed in its office, all appropriative rights acquired after January 1, 1950, to the use of the waters of the interstate tributaries of the Yellowstone River in the state of Montana, the amount of the annual diversions from those interstate tributaries, and any other information that its records may disclose as may be required by the Yellowstone River Compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965; amd. Sec. 161, Ch. 253, L. 1974; R.C.M. 1947, 89-914.

85-20-112. Services of county attorneys. The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this part within their respective counties as the department shall require.

History: En. Sec. 11, Ch. 92, L. 1953; amd. Sec. 162, Ch. 253, L. 1974; R.C.M. 1947, 89-915.

85-20-113. Penalty. Any person who violates or refuses or neglects to comply with any provision of this part or any order or rule adopted by the board or department pursuant thereto or the Yellowstone River Compact is guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $200 for each offense.

History: En. Sec. 12, Ch. 92, L. 1953; amd. Sec. 163, Ch. 253, L. 1974; R.C.M. 1947, 89-916.

85-20-114 through 85-20-120 reserved.

85-20-121. Yellowstone compact obligations unimpaired. Nothing contained in Chapter 280, Laws of 1965, shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965; R.C.M. 1947, 89-103.7.

Part 2

Fort Peck-Montana Compact

Part Cross-References

Reserved Water Rights Compact Commission, 2-15-212.

Indian and federal water rights, Title 85, ch. 2, part 7.

85-20-201. Fort Peck-Montana compact ratified. The compact entered into by the state of Montana and the Assiniboine and Sioux tribes of the Fort Peck Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 15, 1985, is ratified. The compact is as follows:

FORT PECK-MONTANA COMPACT

This Compact is entered into by and between THE STATE OF MONTANA and THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION (herein called the "Parties") and shall become effective as set forth hereinafter.

The Parties agree as follows:

ARTICLE I

GENERAL PURPOSES

The basic purposes of this Compact are to determine finally and forever all rights of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in the State of Montana to water on, under, adjacent to, or otherwise appurtenant to the Reservation, to settle existing disputes and remove causes of future controversy between the Tribes and the State and between Indians of the Fort Peck Reservation and other persons concerning waters of the Missouri River, its tributaries, and ground water, and to settle all claims by the Tribes and by the United States on behalf of the Tribes in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) and the pending adjudication in the state water court initiated pursuant to the provisions of Chapter 697, Laws of Montana 1979.

ARTICLE II
DEFINITIONS

For purposes of this Compact, and for no other purposes, the following definitions apply:

(1) "Acre-foot" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

(2) "Annual" or "per year" means the calendar year commencing January 1 and ending December 31.

(3) "Board" means the Fort Peck-Montana Compact Board established by Article VI.

(4) "Conservation (carry-over) storage" is storage provided in a reservoir to capture and hold water that would otherwise go downstream. Such storage holds the water for beneficial use later in the season or is carried over to a subsequent season or seasons. Evaporation from the surface of such reservoir is considered to be a consumptive use to the extent that it exceeds the evaporative and transpirational losses which occurred in the reservoir area prior to its construction.

(5) "Consumptive use" means the amount of irrigation water that is transpired by vegetation, converted in the processes of photosynthesis and plant tissue growth, and evaporated from adjacent soils, water surfaces and foliage. For uses other than irrigation, consumptive use means the quantity of water diverted less the quantity of reusable return flow within the State.

(6) "Court of competent jurisdiction" means a state or federal district court which otherwise has jurisdiction of the subject matter and the parties, or a tribal court which otherwise has such jurisdiction provided that all parties to the case consent to tribal court jurisdiction.

(7) "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other structure or device, or the impoundment of water in a reservoir. Where a reservoir is constructed or operated on a stream, the annual diversion shall be the greater of:

(a) the inflow into the reservoir minus the outflow for releases or spills downstream from the reservoir, or

(b) withdrawals of water from the reservoir for actual use.

(8) "Domestic use" means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(9) "Fort Peck Irrigation Project" means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.

(10) "Fort Peck Reservoir" means that body of surface water impounded by Fort Peck Dam, at the current spillway elevation.

(11) "Full service irrigation" means any form of irrigation that distributes water on a regularly scheduled basis in order to satisfy the full seasonal crop and soil water requirements.

(12) "Ground water" means any water located under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water. All other water shall be considered surface water.

(13) "Indian" means any person who:

(a) is an enrolled member of the Tribes; or

(b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(c) holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(14) "Industrial" means the use of water for any uses that benefit an industrial enterprise including, but not limited to, industrial cooling, energy production, and evaporation associated with any industrial operation. Among the purposes excluded from the industrial use category are irrigation, stockwater, and domestic uses.

(15) "Instream flow" means that quantity of water scheduled to remain in a stream to maintain fish and wildlife resources.

(16) "Missouri River" means the river formed by the confluence of the Gallatin, Jefferson and Madison Rivers in southwestern Montana, and flowing easterly beyond the eastern boundary of Montana.

(17) "Partial service irrigation" means the diversion of flood runoff from natural channels or water courses and spreading such water for the purpose of applying as much water as practicable to the land during periods of high stream flow to increase crop production.

(18) "Parties" means the Tribes and the State.

(19) "Person" means an individual or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

(20) "Regulatory Storage" is storage provided as a part of a water distribution system for operational purposes. Evaporation loss from the distribution system itself is accounted for and is a part of the unit consumptive use rate established in this Compact and is therefore not considered to be a separate item of consumptive use.

(21) "Reservation" means the Fort Peck Indian Reservation as established in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(22) "Reusable" means capable of further beneficial use.

(23) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the State Department of Natural Resources and Conservation or its successor agency.

(24) "Transfer" means any authorization for the delivery or use of water by a joint venture, service contract, lease, sale, exchange or other similar agreement.

(25) "Tribal Water Right" means the right to divert and use water as confirmed by Article III of this Compact.

(26) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and all officers, agents and departments thereof. Unless

otherwise indicated, for purposes of notification or consent, "Tribes" means the Tribal Chairman or the Chief Executive Official of the Tribes at the time.

(27) "Tributary" or "tributaries of the Missouri River that flow through or adjacent to the Reservation" means those tributaries of the Missouri River that traverse the Reservation, generally in a north to south direction, including:

(a) streams that form the east and west boundaries of the Reservation (Big Muddy Creek, Porcupine Creek and the Milk River);

(b) streams that originate outside the Reservation but empty into the Missouri River within the boundaries of the Reservation (the Poplar River and its tributaries);

(c) streams that are wholly contained within the boundaries of the Reservation (Chelsea Creek, Tule Creek, Wolf Creek, Oswego Creek, and Little Porcupine Creek); and

(d) all other watercourses that traverse the Reservation.

(28) "Wasteful" means the unreasonable loss of water through the design or negligent operation of a diversion or of a water distribution facility.

ARTICLE III
TRIBAL WATER RIGHT

A. General Statement of the Tribal Water Right. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have the right to divert annually from the Missouri River, certain of its tributaries, and ground water beneath the Reservation the lesser of (i) 1,050,472 acre-feet of water, or (ii) the quantity of water necessary to supply a consumptive use of 525,236 acre-feet per year for the uses and purposes set forth in this Compact with a priority date of May 1, 1888, provided that no more than 950,000 acre-feet of water, or the quantity of water necessary to supply a consumptive use of 475,000 acre-feet may be diverted annually from surface water sources. This right is held in trust by the United States for the benefit of the Tribes and is further defined and limited as set forth in this Compact.

B. Persons Who May Use the Tribal Water Right. All uses of water authorized under any applicable law by the following persons shall be considered and calculated as uses of the Tribal Water Right:

1. the Tribes within or outside the Reservation;
2. all individual Indians using water within the Reservation including, but not limited to, Indians exercising uses established pursuant to state law prior to the effective date of this Compact;
3. all non-Indian successors-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in-interest;
4. all other persons receiving water from the Fort Peck Irrigation Project including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact;
5. all other persons authorized to use water by the Tribes pursuant to this Compact, within or outside the Reservation;
6. the United States as trustee for the Tribes or any Indian including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact.

C. Measure of Consumptive Use for Irrigation. Irrigation usage of the Tribal Water Right shall be conclusively deemed to cause a consumptive use of 1.8 acre-feet per acre per year for full service irrigation and 0.48 acre-feet per acre per year for partial service irrigation. Any loss of water due to evaporation from reservoirs constructed in the future for conservation (carry-over) storage rather than for regulatory storage by the United States for the benefit of the Tribes or any Indian, or constructed for such conservation storage by the Tribes or by any Indian, shall be counted as a consumptive use.

D. Purposes for Which the Tribal Water Right May be Used. Within the Reservation, use of water in the exercise of the Tribal Water Right for any purpose may be authorized by the Tribes without regard to whether such use is beneficial as defined by valid state law. No use of the Tribal Water Right may be wasteful or inconsistent with the terms of this Compact. Outside the Reservation, any use of water in the exercise of the Tribal Water Right shall be beneficial as defined by valid state law on the date the Tribes give notice to the State of a proposed use outside the Reservation.

E. Facilities Diverting or Using the Tribal Water Right Outside the Reservation. All persons diverting or using the Tribal Water Right outside the Reservation, including the Tribes as sovereign, shall apply for all permits, certificates, variances and other authorizations required by valid state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water located outside the Reservation, and shall comply with all applicable provisions of this Compact. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained, and the diversion or use has not been found unlawful by a court of competent jurisdiction.

F. Amounts To Be Diverted from the Missouri River.

1. Diversions of water for use within or outside the Reservation may be made in the exercise of the Tribal Water Right from Fort Peck Reservoir and the mainstem of the Missouri River—but without utilization of the conservation (carry-over) storage of Fort Peck Reservoir—in the following amounts:

(a) during the months of November, December, January, February and March, not to exceed 40,000 acre-feet per month;

(b) during the months of April and October, not to exceed 50,000 acre-feet per month;

(c) during the months of May and September, not to exceed 105,000 acre-feet per month;

(d) during the month of June, not to exceed 145,000 acre-feet;

(e) during the month of July, not to exceed 215,000 acre-feet;

(f) during the month of August, not to exceed 180,000 acre-feet.

Provided that the aggregate of monthly diversions in the exercise of the Tribal Water Right from surface water shall not exceed 950,000 acre-feet per year, and the total annual consumptive use shall not exceed 475,000 acre-feet.

2. The Tribes shall report the amount of all actual diversions from Fort Peck Reservoir and the mainstem of the Missouri River to the United States Army Corps of Engineers by April 1st of the calendar year following the year

in which such diversions are made in accordance with paragraph 5 of section J of this Article.

3. All diversions authorized by paragraph 1 of this section may be made without payment to the United States, but the Tribes and any user of the Tribal Water Right shall otherwise comply with all generally applicable laws and regulations of the United States.

G. Export of the Tribal Water Right Outside the State. Use of the Tribal Water Right outside the State shall be in compliance with all valid provisions of state law in effect at the time of the proposed transfer that prohibit, regulate, condition, or permit the transportation of water outside the State.

H. Non-use of the Tribal Water Right not a Forfeiture. Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the right to such use.

I. Sources of Diversions of the Tribal Water Right. In the exercise of the Tribal Water Right water may be diverted:

1. Within the Reservation for use within the Reservation from:

(a) the mainstem of the Missouri River within or adjacent to the Reservation;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and

(c) any ground water source.

2. Outside the Reservation for use within the Reservation from:

(a) Fort Peck Reservoir;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and

(c) the mainstem of the Missouri River below Fort Peck Dam.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article.

3. Within or outside the Reservation for use outside the Reservation from:

(a) Fort Peck Reservoir;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, provided that water from these sources shall not be transported outside the respective watershed of each stream;

(c) the mainstem of the Missouri River below Fort Peck Dam; and

(d) the mainstem of the Missouri River above Fort Peck Reservoir.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article. Diversions authorized by subparagraph (b) shall comply with paragraph 4 of section K of this Article. Diversions authorized by subparagraph (d) shall comply with paragraph 3 of section J of this Article.

J. Notice of and Conditions upon Diversions and Uses of the Tribal Water Right.

1. The Tribes shall give the State not less than 180 days advance written notice of any proposed diversion or use of the Tribal Water Right authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article and shall, in the case of any transfer of the Tribal Water Right, except agreements on the tributaries pursuant to paragraph 4 of section K of this Article, offer the State an opportunity to participate as provided in

paragraph 2 of section K of this Article. Such notice shall include sufficient documentation to demonstrate that:

(a) the proposed use of water complies with section D of this Article;

(b) for diversions outside the Reservation, the proposed means of diversion and the construction and operation of the diversion works are adequate;

(c) the proposed use and diversion will not adversely affect, except with the consent of the owner of such right, any of the following rights to the use of water existing at that time:

(i) any water right arising under the laws of the United States;

(ii) any appropriative right to the use of water established pursuant to the laws of the State that has not been abandoned, but excluding any reservation of water made pursuant to the laws of the State which has not been put to actual beneficial use by the date notice is given;

(d) the proposed use does not cause any unreasonable significant adverse environmental impact; and

(e) proposed diversions in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:

(i) substantially impair the quality of water for existing uses in the source of water from which the diversion is made;

(ii) be made where low quality water which can economically be used is legally and physically available to the Tribes for the proposed use;

(iii) create or substantially contribute to saline seep; or

(iv) substantially injure fish or wildlife populations in the source of water from which the diversion is made.

The requirements of subparagraph (c) of this paragraph may be satisfied by a showing that the owner of such right has consented to the adverse effect. Subparagraph (c) shall not be construed to alter or avoid in any way the consequences resulting from such consent under state law.

2. A proposed diversion or use of the Tribal Water Right outside the Reservation authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article may be challenged only:

(a) within 30 days after the expiration of the notice period provided in paragraph 1 of this section;

(b) in a court of competent jurisdiction; and

(c) by the State or by a person whose rights are adversely affected by the proposed diversion or use.

In any such case, the Tribes shall have the burden of going forward and the burden of proving by a preponderance of the evidence that they have satisfied the requirements of paragraph 1 of this section.

3. Diversions of water in the exercise of the Tribal Water Right outside the Reservation from the mainstem of the Missouri River above Fort Peck Reservoir, as authorized in subparagraph 3(d) of section I of this Article, may be made so long as the Tribes or any user of the Tribal Water Right:

(a) comply with all the laws of the State in effect at the time the diversion is proposed, including but not limited to state water use statutes;

(b) give not less than 180 days advance written notice of any proposed diversion in the manner required in paragraph 5 of this section:

(i) if the diversion is to be made from a reservoir, to the operator of the reservoir; or

(ii) if the diversion is not to be made from a reservoir, to the operator of the first dam, upstream and downstream, if any, from the point of diversion;

(c) obtain approval of the diversion from the State legislature.

4. For purposes of demonstrating compliance with subparagraph 1(c) and subparagraph 3(a) of this section and paragraph 6 of Section K of this Article, the portion of the Tribal Water Right to be diverted will be deemed an appropriative right which has:

(a) been acquired on May 1, 1888;

(b) a point of diversion and use where the water is actually being diverted and used or, if not actually being diverted, where the water would first flow on or adjacent to the Reservation;

(c) the existing use or, if not actually in use, an irrigation use provided, however, that the use can be transferred to a purpose other than irrigation without restriction as to period of use so long as the requirements of Section F of this Article are observed;

(d) the actual consumptive use or, if not actually in use or if being used for irrigation purposes, a consumptive use of 1.8 acre-feet per acre per year; and

(e) not been abandoned or forfeited.

5. Any notice of a diversion required by paragraph 3 of this section and any report of a diversion required by paragraph 2 of section F of this Article shall specify:

(a) the person authorized to make the diversion;

(b) the amount of water proposed or authorized to be diverted annually;

(c) the amount proposed or authorized for annual consumptive use;

(d) the point of diversion;

(e) the period of use;

(f) the place of use; and

(g) the purposes for which the water may be used.

K. Transfers of the Tribal Water Right.

1. As an incident to and in the exercise of the Tribal Water Right, the Tribes may transfer within or outside the Reservation, as authorized by federal law and this Compact, the right to use water but may not permanently alienate such right or any part thereof. Any such transfer of water by the Tribes shall be subject to all provisions of this Compact.

2. Prior to making any transfer which authorizes use of water outside the Reservation to be diverted from the mainstem of the Missouri River, including Fort Peck Reservoir, the Tribes shall give not less than 180 days advance written notice to the State of the proposed terms and conditions of the transfer, and shall offer the State the opportunity to participate in the transfer as a substantially equal partner with the Tribes, assuming obligations and receiving benefits of the transfer under terms and conditions agreed to by the Parties. If the State does not accept the opportunity within the 180-day notice period, or if the State unreasonably delays the institution or completion of approval processes required by state law or unreasonably delays resolution of any litigation arising from its decision to accept the opportunity, the Tribes may proceed with the proposed transfer without State participation, provided that the proposed transfer shall be subject to all other provisions of this Compact. If the State does not accept the opportunity, or if State participation in the joint transfer is not approved, the State shall not later pursue the opportunity,

except in accordance with all the terms of this Compact, including paragraph 3 of this section.

3. Prior to making any transfer allowing use or diversion of water from Fort Peck Reservoir or from the mainstem of the Missouri River below Fort Peck Dam, the State shall give not less than 180 days advance written notice to the Tribes of the proposed terms and conditions of the transfer and shall offer the Tribes the same opportunity to participate in the transfer as a substantially equal partner with the State, assuming obligations and receiving benefits of the transfer on terms and conditions agreed to by the Parties. If the Tribes do not accept the opportunity within the 180 day notice period, the State may proceed with the proposed transfer without the Tribes' participation, and the Tribes shall not later pursue the opportunity except in accordance with all the terms of this Compact, including paragraph 2 of this section.

4. If otherwise authorized by federal law, the Tribes may enter into an agreement with any person who is exercising or proposing to exercise a right under the laws of the State to use surface water outside the Reservation on any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, which agreement allows such person's diversion and use and protects it from any other exercise of the Tribal Water Right provided, however, that:

(a) before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;

(b) subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;

(c) the amount of water subject to the agreement shall be considered a consumptive use of the Tribal Water Right;

(d) the agreement shall not permanently alienate the Tribal Water Right or any part thereof.

5. The Tribes may transfer annually only the following amounts of water for consumptive use outside the Reservation:

(a) 50,000 acre-feet;

(b) plus 35 percent of any amount over 200,000 acre-feet but less than 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State;

(c) plus 50 percent of any amount over 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State.

Transfers of the Tribal Water Right shall not be considered as part of any amounts authorized by state law to be transferred annually by the State.

6. In no event shall the Tribes be authorized to transfer less than 50,000 acre-feet of water per year outside the Reservation. The limits established in paragraph 5 of this section shall apply so long as the State is authorized to transfer annually at least 50,000 acre-feet of water pursuant to state law. If statutory authorization for the State to transfer water is not enacted, is repealed, or is held invalid, or if the amount of water authorized by state law to be transferred by the State is less than 50,000 acre-feet per year, then for any period in which the authorization or the limitation is not in force the Tribes may transfer water in accordance with all terms and conditions of this Compact other than paragraph 5 of this section. However, such transfers will be subject to any volume limitations provided by federal law or, in the absence of any

federal volume limitations, the Tribes may transfer water in accordance with all terms and conditions in this Compact other than paragraph 5 of this section and with any volume limitations imposed by state law which would apply to a holder of a right to the use of water established pursuant to state law. For the purposes of complying with volume limitations imposed by state law, the Tribal Water Right will be deemed to have the characteristics set forth in paragraph 4 of section J of this Article.

7. Unless authorized by federal law, the State shall not in any manner whatsoever tax any proceeds received by the Tribes as consideration for any transfer of the Tribal Water Right.

L. Instream Flows.

1. At any time within five years after the effective date of this Compact, the Tribes may establish a schedule of instream flows to maintain any fish or wildlife resource in those portions of streams, excluding the mainstem of the Milk River, which are tributaries of the Missouri River that flow through or adjacent to the Reservation. These instream flows shall be a part of the Tribal Water Right with a priority date of May 1, 1888. Water remaining in a stream to maintain instream flows pursuant to such a schedule shall be counted by the Tribes as a consumptive use of surface water.

2. Instream flows may be established by the Tribes only in accordance with this section. The Tribes may change the use of water for maintenance of instream flows to another purpose only with the consent of the State.

M. No Other Diversion or Use of the Tribal Water Right. No other diversion or use of the Tribal Water Right shall be made other than those authorized or recognized by this Article.

ARTICLE IV
PROTECTION OF USES UNDER STATE LAW

A. Uses Protected.

1. The following existing and proposed uses of water by Indians within the Reservation are protected and shall not be subordinated to any other uses by subsequent provisions of this Article:

(a) a maximum of 113 acres of irrigated land within the Wolf Creek watershed;

(b) a maximum of 11 acres of irrigated land within the Poplar River watershed;

(c) a maximum of 523 acres of irrigated land within the Big Muddy Creek watershed; and

(d) a maximum of 300 acres of land irrigated with ground water near the confluence of Porcupine Creek and the Milk River.

2. Uses of water by Indians within the Reservation for stockwatering purposes not in excess of 20 acre-feet per year for each impoundment and for all domestic uses are protected and shall not be subordinated to any other uses by subsequent provisions of this Article.

3. With the exception of the uses protected in paragraphs 1 and 2 of this section, diversion and use of water in the exercise of the Tribal Water Right except from the mainstem of the Missouri River, including water allocated to instream flow purposes, shall be subordinate to the following uses of water in the Porcupine Creek, Poplar River, Big Muddy Creek, Little Porcupine Creek,

Wolf Creek, Tule Creek, and Chelsea Creek watersheds, including all tributary streams within those watersheds, and all underlying ground water whether or not hydrologically connected with the surface water:

(a) the beneficial uses of water with a priority date of December 31, 1984 or earlier established under the laws of the State and identified in Appendix A to this Compact;

(b) such rights of the United States Fish and Wildlife Service to the waters of Big Muddy Creek for the Medicine Lake National Wildlife Refuge as may be finally determined by the state water court;

(c) beneficial uses of water for domestic purposes;

(d) beneficial uses of water for stock watering purposes in existence prior to December 31, 1984, and beneficial uses of water for stock watering subsequent to that date not in excess of 20 acre-feet per year for each impoundment.

4. Except as to the rights protected in paragraph 3 of this section, the Tribal Water Right shall be prior to all rights to the use of surface and ground water established under the laws of the State with a priority date later than May 1, 1888.

B. Changes of Protected Uses.

1. The rights to the use of water protected by paragraph 3 of section A of this Article may be changed in accordance with state law as to point of diversion, period of use, place of use, purpose of use, or ownership of the right provided that:

(a) the proposed change will not adversely affect any use of the Tribal Water Right existing at the time of the proposed change;

(b) the amount of surface water flowing onto the Reservation within the Poplar River, the Big Muddy Creek, or the Porcupine Creek watersheds, will not be changed; and

(c) the source of the water will not be changed from surface to ground water, or from ground to surface water, or from one watershed to another.

2. Upon receiving an application for a proposed change authorized by paragraph 1 of this section, the State shall give the Tribes such advance written notice as is required by state law.

3. If an irrigation use is changed in any manner, or if a reservoir is constructed or operated which results in the consumptive use of water by evaporation, the following limitations apply:

(a) no more than 1.8 acre-feet of consumptive use per year may be authorized for each acre of land retired from full service irrigation; and

(b) no more than 0.48 acre-feet of consumptive use per year may be authorized for each acre of land retired from partial service irrigation;

(c) evaporation from any reservoir shall be charged as a consumptive use in accordance with definition 4 in Article II.

4. If an irrigation use is changed to an industrial use, all diversions and return flows shall be measured by a device acceptable to and subject to periodic inspection and testing by the State and the Tribes at the expense of the owner. The owner shall also have the quality of the return flows sampled and tested by a laboratory acceptable to the State and the Tribes as often as reasonably required by the State and the Tribes and at the expense of the owner.

ARTICLE V
ADMINISTRATION OF WATER RIGHTS

A. United States Administration. All rights to the use of water received from the Fort Peck Irrigation Project shall be administered by the United States, and the United States has the final and exclusive jurisdiction to resolve all disputes concerning uses of water received from the Fort Peck Irrigation Project subject to any judicial review provided by applicable law.

B. Tribal Administration.

1. The Tribal Water Right shall be administered by the Tribes, and the Tribes have the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right, except for disputes concerning uses of water received from the Fort Peck Irrigation Project and disputes involving users of the Tribal Water Right pursuant to agreements authorized in Article III, section K, paragraph 4.

2. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be adopted by the Tribes and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact by the Parties. Such code shall take effect 18 months after ratification of this Compact unless sooner disapproved by the Secretary of the Interior. Pending the adoption and approval of the tribal water code, administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior as trustee for the Tribes. The Tribes shall not administer the Tribal Water Right in a manner which denies any person a water right owned by that person which arises under the laws of the United States.

3. Within six months after the tribal water code takes effect or within six months after disapproval of the code by the Secretary, the Tribes or the Secretary of the Interior shall provide the State with notice of each existing use of the Tribal Water Right which shall show:

(a) the person authorized to make the diversion;
(b) the amount of water authorized to be diverted annually;
(c) the amount of water authorized for annual consumptive use;
(d) the point of diversion;
(e) the period of use;
(f) the place of use;
(g) the uses for which the water may be diverted; and
(h) the relative priority of the use as against other uses of the Tribal Water Right.

4. The Tribes shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and ground water authorized by the Tribes during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year.

C. State Administration.

1. The State shall administer all rights to the use of surface water and ground water within or outside the Reservation which are not a part of the Tribal Water Right to the fullest extent allowed by law. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within two years after ratification of this Compact, the State shall notify the Tribes of all existing uses authorized by the State on the mainstem of the Missouri River below Fort Peck Dam and on all tributaries of the Missouri River that flow through or adjacent to the Reservation, except the mainstem of the Milk River. The State shall notify the Tribes within sixty days after the end of each quarter year of all new uses of surface and ground water permitted by the State on each of these sources during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. Notices required by this paragraph shall include the information required by paragraph 3 of section B of this Article.

3. No agency of the State shall administer any part of the Tribal Water Right. From and after the effective date of this Compact, unless the Tribal Water Right confirmed in Article III is fully utilized at the time application is made for a permit or other authorization, the State shall issue no permit or other authorization to divert or use water within the Reservation to the following persons:

(a) the Tribes;

(b) any Indian;

(c) any non-Indian successor-in-interest to any allottee on the Reservation by virtue of that person's assertion of a right arising under the laws of the United States; or

(d) the United States for the benefit of the Tribes or any Indian or any non-Indian successor-in-interest to any allottee.

D. Regulation of Ground Water.

1. With the exception of uses protected in Article IV, neither the State nor the Tribes shall authorize or continue the use of ground water without the consent of the other if such use will:

(a) result in degradation of instream flows established pursuant to section L of Article III; or

(b) contribute to the permanent depletion or the significant degradation of the quality of a ground water source which in whole or in part underlies the Reservation.

2. With the exception of uses protected in Article IV, the State shall not, without the Tribes' consent, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the Tribes. The Tribes shall not, without the consent of the State, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the State and protected by Article IV of this Compact.

ARTICLE VI

FORT PECK-MONTANA COMPACT BOARD

A. Board established. There is hereby established the Fort Peck-Montana Compact Board, which shall exercise powers and responsibilities as set forth in this Article.

B. Membership.

1. The Board shall consist of three members. One member shall be appointed by the Governor of the State of Montana or, in lieu of such appointment, shall be the Governor. The salary and expenses of that member shall be paid by the State. One member shall be appointed by the Chairman of

the Tribes, or in lieu of such appointment, shall be the Tribal Chairman. The salary and expenses of that member shall be paid by the Tribes. The third member shall be selected by agreement of the other two members. The salary and expenses of that member and all other expenses of the Board shall be shared equally by the State and the Tribes subject to the availability of funds. Each member duly appointed or selected shall hold office for a term of six years, and for so long thereafter until a successor shall be appointed or selected. The initial term of each member shall be staggered, with one member serving a six-year term, one a four-year term, and one a two-year term. The initial term of each member shall be chosen by lot, or by any other procedure and agreed upon in writing by the first three members of the Board. If the Governor or the Tribal Chairman serves on the Board, such person shall not serve on the Board beyond his or her term as Governor or Tribal Chairman.

2. Should the two appointed members fail to agree within sixty days of the effective date of this Compact or within thirty days after any vacancy occurs, on the selection of the third member, the following procedure shall be utilized:

(a) within five days each member shall nominate no more than five and no less than three persons to serve as a member of the Board;

(b) within fifteen days thereafter each member shall reject all but one of the persons nominated by the other member;

(c) the chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

3. Vacancies on the board shall be filled by appointment of a person to serve the unexpired term of the member whose seat has become vacant. If the member appointed by the Governor becomes unable or unwilling to serve on the Board, the Governor shall make the appointment within fifteen days. If the member appointed by the Tribal Chairman becomes unable or unwilling to serve, the Tribal Chairman shall make the appointment within fifteen days. If the third member of the Board becomes unable or unwilling to serve on the Board, the remaining members shall fill the vacancy under the procedure set forth in paragraphs 1 and 2 of this section.

C. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. Meetings may be in person or, in appropriate circumstances, by telephone. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be delivered to all parties in the proceeding before the Board, and to both Parties to this Compact.

D. Jurisdiction of the Board. The Board shall have exclusive jurisdiction, only as provided in this Compact, to resolve any controversy over the use of ground water to which this Compact pertains, any controversy over the use of surface water within the Reservation or from any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, and any controversy as to the meaning of this Compact between: (i) on the one hand, the Tribes or any person or persons claiming a right to use the Tribal Water Right; and (ii) on the other hand, the State or any person or persons claiming a right to use water under the laws of the State.

E. Powers and Duties of the Board.

1. The Board shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The courts of the Tribes and the State shall enforce any subpoena issued by the Board in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued in a civil action by courts of the Tribes and the State.

2. The Board shall hold hearings in proceedings before it and shall give advance notice to the Tribes, the State and all parties to any proceeding personally or by registered mail not less than five days before any hearing. Appearance at a hearing waives such notice. The Board may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Tribes, the State and all parties to the proceeding are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense.

3. The Board may enter an order after hearing granting any party to the dispute before it temporary or preliminary injunctive relief, or any other relief which the Board deems appropriate except money damages. The Board or any party to a proceeding before the Board may invoke the jurisdiction of a court of competent jurisdiction to enforce any temporary or preliminary injunction so issued by the Board by filing a petition for enforcement naming the enjoined person as respondent. Upon filing the petition, the court shall enter any order it deems appropriate for enforcement of the injunction ordered by the Board, including but not limited to injunctive relief on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party. The United States, the State, and the Tribes shall not be required to post any bond. The court may appoint a water commissioner or master to monitor compliance with such relief.

4. The Board shall adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Compact. Such rules and regulations must be consistent with all provisions of this Compact. All records of the Board shall be open to public inspection except for privileged information.

5. The Board may employ or seek assistance of such clerical or other personnel and may establish such offices as it deems necessary for the performance of its functions according to this Compact. Pending the establishment of a principal office, the Board's office shall be located at Fort Peck Agency of the Bureau of Indian Affairs.

6. The annual budget of the Board shall be subject to approval of the Parties to this Compact and to the availability of funds appropriated by the Parties.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. On application of a party within a reasonable time, but in any event no more than ninety days after a decision is rendered, the Board may modify or correct any decision:

(a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision;

(b) where the decision is imperfect in a matter of form not affecting the merits of the controversy; or

(c) where the decision requires clarification.

2. Any party before the Board may, within ten days of any final decision, apply to the Board to modify or set aside any aspect of the decision. Notice of such application shall be served personally or by registered mail upon all parties to the proceeding. Any other party shall have ten days within which to respond to the application. The Board shall act on such application within ten days after a response is filed or, if no response is filed, within fifteen days after the application is filed. If the Board fails to act within the time limitations set forth in this paragraph, the application shall be deemed denied. The time for appeal provided in paragraph 3 of this section shall not begin to run until the application is determined as provided in this paragraph.

3. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribes, the State and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.

4. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

(a) the decision is not supported by substantial evidence;

(b) the decision was procured by corruption, fraud or undue means;

(c) there was evident partiality or corruption by the Board or by any member;

(d) the Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

(e) the Board exceeded its authority under the terms of this Compact; or

(f) the decision is contrary to law.

5. Unless an appeal is timely filed as provided in paragraph 3 of this section, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribes, the State or any party before the Board in the proceeding in which the decision was made.

6. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, may order such temporary or permanent relief as it considers just and proper.

7. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, in the manner and to the same extent as from orders or judgments of the court in a civil action.

8. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, to permit the appeal or judicial enforcement of Board decisions as provided in this Compact, except that such waivers shall not extend to any action for money damages including costs and attorneys' fees as a result of such judicial action.

ARTICLE VII
FINALITY AND EFFECTIVENESS OF COMPACT

A. Ratification. This Compact shall become effective as to both parties when ratified by the Legislature of the State of Montana and the Fort Peck Tribal Executive Board and approved by the United States Departments of Justice and the Interior. Ratification by the State and by the Tribes is irrevocable, and this Compact may not be modified in any manner whatsoever except with the joint consent of the legislative body of both Parties.

B. Incorporation into Decrees and Disposition of Federal Suits.

1. The Parties and the United States shall petition for incorporation of this Compact into the preliminary decrees and final decrees in any state water court proceedings to adjudicate any right to the use of water to which this Compact pertains, and this Compact may not be modified in any manner whatsoever without the consent of both Parties as provided in section A of this Article. The United States shall not be bound by provisions of this Compact until it is incorporated into the final decree, as provided in this section.

2. This Compact shall only be filed as a proposed consent decree in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), or United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) if there is a final determination by the state courts that they lack jurisdiction over, or that the state proceedings are inadequate to adjudicate, some or all of the water rights asserted in either of the above cases. Upon a final determination that the state courts have jurisdiction over, and that the state proceedings are adequate to adjudicate all of the water rights in the above cases, the United States and the Parties will immediately execute a joint motion pursuant to Rule 41(a) of the Federal Rules of Civil Procedure to dismiss with prejudice and on their merits all claims by the Tribes and the United States on behalf of the Tribes in the pending cases.

ARTICLE VIII
DISCLAIMERS AND RESERVATION OF RIGHTS

A. Disclaimers. Nothing in this Compact shall be so construed or interpreted:

1. to establish the nature, extent, transferability, or manner of enforcement of water rights of any Indian reservation other than the Fort Peck Indian Reservation;

2. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian outside the Reservation by purchase of such right or by purchase of land, or by application to the State;

3. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian within the Reservation:

(a) by purchase of such right or by purchase of land, provided that water rights acquired by such purchase after ratification of this Compact shall be deemed to be an exercise of the Tribal Water Right; or

(b) by application to the State, provided that the Tribal Water Right confirmed in Article III has been fully utilized at the time an application is made;

4. to determine the relative rights inter sese of persons using water under the authority of the State or the Tribes;

5. to limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

6. to authorize the taking of a water right which is vested under state or federal law;

7. to create or deny substantive rights through headings or captions used in this Compact; or

8. to address or prejudge whether, in any interstate apportionment of the waters of the Missouri River Basin, the Tribal Water Right shall be counted as a part of the waters apportioned to the State.

B. Reservation of Rights. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

ARTICLE IX
TRIBAL RELINQUISHMENT OF OTHER WATER CLAIMS

The Tribal Water Right confirmed in Article III shall be final and conclusive. With the exception of the Tribal Water Right recognized herein and rights established under state law as authorized by this Compact, the Tribes and the United States as trustee for the Tribes hereby relinquish forever any and all existing and future claims to water from any source and for any purpose. This relinquishment includes, but is not limited to, any claim for water derived from: aboriginal use of land or water; any Indian treaties; any act of Congress; and any executive act of the United States.

ARTICLE X
BINDING EFFECT

A. Persons Bound. Upon the effectiveness of this Compact, its terms will be binding:

1. upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification, or authorization is to be determined by Montana law; and

2. upon the Tribes and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, or any right arising under tribal law, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification or authorization is to be determined by Tribal law. Notwithstanding any other provision of law, the Tribal Water Right confirmed in Article III of the Fort Peck-Montana Compact includes conclusively and forever the water rights arising under the laws of the United States of all

persons on the Fort Peck Reservation by virtue of the ownership or purchase of any Indian allotment, and the courts of the State shall not have jurisdiction to adjudicate or decree any such right claimed by any such person.

B. Effect on Other Laws. The provisions of the Fort Peck-Montana Compact shall supersede any present or future enactment or common law rule inconsistent with such Compact including but not limited to Montana Code Annotated 28-2-708.

ARTICLE XI
SEVERABILITY

Should any part of this Compact other than Articles III, IV, VII, or IX be held to be invalid, all other parts thereof shall continue to be in full force and effect. Should any part of Articles III, IV, VII, or IX be held invalid, either party may withdraw from the remaining provisions of this Compact by action of its legislative body taken within one year from the determination of such invalidity.

ARTICLE XII
LEGISLATION

A. Future legislation. The parties agree to seek enactment of further legislation if it becomes necessary to effectuate the provisions and purposes of this Compact, and to protect such provisions and purposes from challenge and attack, provided that no provisions of the Compact shall be modified as to substance except as provided in Article VII.

B. Petition to Congress.

1. The Parties hereby request the Montana legislature to petition Congress to enact the following legislation in substantially the following form:

"Sec. 2. For purposes of this Act, the term:

(a) "Fort Peck-Montana Compact" means that Compact pertaining to the reserved water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation ratified by the legislature of the State of Montana on May 15, 1985 and by the Tribes on April 29, 1985.

(b) "Reservation" means the Fort Peck Indian Reservation as defined in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(c) "Secretary" means the Secretary of the Interior.

(d) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

"Sec. 3.

"(a) The Tribes, subject to the approval of the Secretary, may enter into any joint venture, service contract, lease, exchange or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Water Agreement") authorizing the delivery, use or transfer of any part of the water right confirmed in the Tribes by the Fort Peck-Montana Compact for a specified term, not to exceed fifty years, inclusive of all renewal periods. A Water Agreement may authorize the diversion or use of water within or outside the Reservation subject to all terms of the Fort Peck-Montana Compact.

"(b) The Secretary shall approve or disapprove any Water Agreement within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and any other requirement of federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to 28 U.S.C. 1361. Notwithstanding any other law, all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Water Agreement or the financial return to the Tribes, shall be held by the Department of the Interior as privileged proprietary information of the Tribes."

2. The provisions of this Compact shall have no force and effect until the resolution set forth in paragraph 1 of this section is approved by the Montana Legislature and submitted to Congress.

IN WITNESS WHEREOF the representatives of the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have signed this Compact in five original counterparts on the 10th day of April, 1985.

For the Assiniboine and Sioux
Tribes of the Fort Peck Indian Reservation

....
Walter Clark

....
Norman Hollow

....
Caleb Shields

For the State of Montana
Montana Reserved Water Rights Compact Commission

.... W. Gordon McOmber, Chairman	.... Daniel O. Kemmis
.... Jack E. Galt, Vice Chairman	.... A.B. Linford
	.... Joseph P. Mazurek
.... William M. Day	.... Audrey G. Roth
.... Everett C. Elliott	.... Chris D. Tweeten

APPROVED:

For the Secretary of the Interior

....
For the Attorney General of the United States

....

History: En. Sec. 1, Ch. 735, L. 1985.

Part 3

Northern Cheyenne-Montana Compact

85-20-301. Northern Cheyenne-Montana compact ratified. The compact entered into by the state of Montana and the Northern Cheyenne tribe of the Northern Cheyenne Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

NORTHERN CHEYENNE TRIBE

UNITED STATES OF AMERICA

This Compact is entered into by and among the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, the State of Montana, and the United States of America to settle, for all time, any and all existing claims of or on behalf of the Northern Cheyenne Tribe to water within the State of Montana.

RECITALS

WHEREAS, in 1975, the Northern Cheyenne Tribe and the United States, on behalf of the Tribe, brought suits in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights;

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Northern Cheyenne water rights;

WHEREAS, the federal district court suits were stayed in 1983 pending the outcome of Montana State court water adjudication proceedings;

WHEREAS, the adjudication of Northern Cheyenne water rights under state law has been suspended while negotiations have proceeded to conclude a compact resolving all reserved water rights claims of the Northern Cheyenne Tribe;

WHEREAS, the Northern Cheyenne Tribe and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's reserved water rights claims and any claims to water rights made on behalf of the Tribe by the United States;

WHEREAS, it is in the best interest of all parties that the reserved water rights claims of the Northern Cheyenne Tribe be settled through a Water Rights Compact;

WHEREAS, the parties agree that settlement of the reserved water rights claims of the Northern Cheyenne Tribe is dependent on the repair and enlargement of the Tongue River Reservoir;

NOW THEREFORE, the parties agree as follows:

Article I

Definitions

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. “Alluvial groundwater” means water located below the land surface within the Quaternary hydrostratigraphic unit that borders or underlies major perennial and intermittent streams in the Tongue River and Rosebud Creek basins. This unit is composed of unconsolidated alluvial deposits of clay, silt, sand, and gravel. For the purposes of this Compact, all other water below the land surface will be deemed nonalluvial groundwater.

3. “Annual” or “per year” means during one year as defined by this Compact.

4. “Board” means the Northern Cheyenne-Montana Compact Board established by Article IV of this Compact.

5. “Completion date” means the date of completion of a project to repair and enlarge the Tongue River Dam to a degree sufficient to provide the storage component of the Tribal Water Right subject to the conditions provided in this Compact.

6. “Depletion” means, for any diversion of water, the difference between the quantity of water diverted and the quantity of return flows within the basin.

7. “Direct flow of the Tongue River” means the water in the Tongue River and its tributaries that has not been stored in the Tongue River Reservoir.

8. “Domestic use” means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

9. “Excess water” means increases in the Tongue River basin water supply resulting from conditions different from those assumed in the Tongue River Water Model.

10. “Exchange water” means water available to the Tribe from the Tongue River direct flow or from the Tongue River Reservoir storage in exchange for Tribal return flows made available to other Tongue River water users.

11. “Indian” means any person who: a) is an enrolled member of the Northern Cheyenne Tribe; or b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or c) holds, or is recognized by the Secretary of the Interior as eligible to hold, trust and restricted property on the Northern Cheyenne Reservation.

12. “Manifolded well system” means a water distribution or conveyance facility that is supplied by two or more wells.

13. “Miles City Decree water right” means a water right, finally decreed in any general adjudication of the Tongue River, or recognized under state law until such final adjudication, which is based on the decree entered in Miles City Canal & Irrigating Co. v. Lee, et al., Montana Seventh Judicial District, No. 2809, May 20, 1914, and which has a priority date of March 24, 1909, or earlier.

14. “Parties” means the Tribe, the State of Montana, and the United States.

15. “Person” means an individual or any other entity, public or private, including the State, the Tribe, and the government of the United States and all officers, agents, and departments thereof.

16. “Ratification date” means the date this Compact has been approved by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana.

17. "Reservation" means the Northern Cheyenne Reservation as established by Executive Orders of November 26, 1884 and March 19, 1900.

18. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the State Department of Natural Resources and Conservation or its successor agency.

19. "State contract right" means a right to receive stored water from the Tongue River Reservoir, not to exceed a cumulative total of 40,000 acre-feet per year, pursuant to a contract that allocates the storage rights of the Montana Department of Natural Resources and Conservation or its successor agency.

20. "Tongue River Water Model" means the Tongue River Reservoir Operations computer model that is documented in: Tongue River Modeling Study, Final Report, submitted on July 20, 1990, to the Engineering Bureau of the Water Resources Division of the Montana Department of Natural Resources and Conservation, or any revision agreed to by the parties. The Final Report and any agreed revisions are incorporated herein by reference as though set forth in full.

21. "Transfer" means any authorization for the delivery or use of water from the Tribe or any person authorized by the Tribe to any other person by a service contract, lease, sale, exchange or other similar agreement.

22. "Tribal Water Right" means the right to divert or use water as described by Articles II and III of this Compact.

23. "Tribe" means the Northern Cheyenne Tribe of the Northern Cheyenne Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, "Tribe" means the Tribal President or the Chief Executive Official of the Tribe.

24. "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "United States" means the Secretary of the Department of the Interior.

25. "Year" means the twelve-month period beginning April 1st and ending March 31st.

Article II

Tribal Water Right

A. Quantification of Water Right.

The water rights of the Northern Cheyenne Tribe are as follows:

1. Existing Non-Agricultural Uses.

Tribal and individual Indian stockwater, domestic and municipal water uses on the Reservation and in existence as of the ratification date are hereby recognized and protected as part of the Tribal Water Right, and are in addition to the water rights set forth in Sections A.2., A.3., and A.4. of this Article. All such existing uses shall be governed by the terms of this Compact.

2. Tongue River.

Subject to the terms of this Compact, the Tribal Water Right in the Tongue River basin consists of the right to divert or use or to permit the diversion or use of up to 32,500 acre-feet per year, from a combination of direct flow, storage, and exchange water. Tribal and individual Indian irrigation uses in existence on the Reservation in the Tongue River basin as of the ratification date are recognized and protected, and shall be counted as a use of the 32,500 acre-feet per year right described in Section A.2. of this Article.

a. Direct Flow Right. The Tribe has a right to divert or use or permit the diversion or use of up to 12,500 acre-feet of water per year from direct flow of the Tongue River and its tributaries with a priority date of October 1, 1881; provided, that:

i. The Tribe's annual depletion of its direct flow water right in the Tongue River and its tributaries shall not exceed 75 percent of the amount diverted, or 9,375 acre-feet per year; and

ii. The Tribe's direct flow water right in the Tongue River and its tributaries may not be used in a manner that adversely affects:

A. Miles City Decree water rights, or

B. Water rights from off-Reservation tributaries of the Tongue River, which are finally decreed in any general adjudication of the Tongue River, or are recognized under state law until such final adjudication, and which have a priority date of June 30, 1973 or earlier and are based on the use of an irrigation system in place and not abandoned as of June 30, 1973.

b. Storage and Exchange Water. The Tribe has a right to divert or deplete, or permit the diversion or depletion of, up to 20,000 acre-feet per year from a combination of water stored in the Tongue River Reservoir and exchange water. The availability of the 20,000 acre-feet per year depends, as provided in the Tongue River Water Model, upon the annual schedule utilized by the Tribe for diversions of Tongue River direct flows. Except as provided in paragraph A.2.c.ii. of this Article, any reduction in Tongue River Reservoir stored water resulting from Tribal diversions of Tongue River direct flows shall not affect State contract rights, as defined in this Compact, but shall be satisfied exclusively from the right described in this paragraph. Tribal use of stored water from the Tongue River Reservoir shall be measured at the Reservoir.

c. Shortages.

i. The Tribal Water Right in the Tongue River basin shall be subject to shortages due to natural low flows that are consistent with the period of record used in the Tongue River Water Model in diversion amounts not to exceed 50% in any one year and 100% cumulative in any ten-year period.

ii. Decreases in the amount of water stored in the Tongue River Reservoir that are caused by: (i) sedimentation; (ii) Reservoir inflows lower than those assumed in the Tongue River Water Model; (iii) normal and expected maintenance of the Tongue River Dam and associated structures; or (iv) normal and expected deterioration of the Tongue River Dam and associated structures shall not be considered a failure of the Tongue River Dam as that term is utilized in paragraph A.2.f. of this Article. All such decreases in water availability shall be shared pro rata among all users of stored water including the Tribe.

d. Excess Water. The Tribe shall, as part of the Tribal Water Right, have the first right to use excess water, as defined in this Compact; provided, that total use of the Tongue River Tribal Water Right shall not exceed 32,500 acre-feet per year diverted from direct flow, storage, and exchange water. Tribal nonuse of excess water in any one year shall not affect the right of the Tribe to use excess water in any subsequent year.

e. Contract Water. Nothing in this Compact shall affect the water, and any rights therein, secured to the Tribe by Water Purchase Contract No. 232 for 7,500 acre-feet per year, dated March 15, 1938, between the Tongue River Water Users Association, the Water Conservation Board of the State of Montana and the United States, through the Secretary of the Interior. Any water entitlement pursuant to the Contract shall be in addition to and not a part of the 32,500 acre-feet per year Tribal Water Right set forth above.

f. Failure of Tongue River Dam. In the event of a failure of the Tongue River Dam which causes a substantial diminution of the Tribe's storage right set forth in paragraph A.2.b. of this Article, and notwithstanding the provisions of Article V.A. of this Compact, any party may within 180 days of said failure request the others to renegotiate this Compact. The parties shall have three years from the date of the request to reach a new agreement, during which time all of the provisions in this Compact shall remain in full force and effect. If no party requests renegotiation, or if a new agreement is not reached within three years of the request, the provisions of paragraph A.2.a.ii. of this Article concerning the subordination of the Tongue River direct flow Tribal Water Right to other specified water rights, shall become null and void; provided, that all other provisions of this Compact shall remain in full force and effect. The Tribe shall not be entitled to void or terminate this Compact, or to assert that the State is in breach of the Compact, for a failure of the Tongue River Dam; provided, that any and all other rights of the Tribe arising from such event shall not be affected by this paragraph.

3. Rosebud Creek.

a. Water Right. The Tribe has a right to divert or use or to permit the diversion or use from Rosebud Creek and its tributaries, for agricultural purposes only, of 1,800 acre-feet of water per year, or enough water to irrigate 600 acres of land per year, whichever is less, with a priority date of October 1, 1881. Tribal and individual Indian irrigation uses in existence as of the ratification date on-Reservation in the Rosebud Creek basin are recognized and protected, and shall be considered a use of the 1,800 acre-feet per year right described in this paragraph.

b. Implementation. The Tribe agrees that in the period between May 1, 1991 and July 1, 1993, the Tribe, or persons authorized by it, will develop no more than 200 acres of land in addition to irrigation uses in existence as of May 1, 1991, through irrigation methods involving pumping of alluvial groundwater, except that the Tribe, or persons authorized by it, may develop up to the full 600 acres of land, or any portion thereof, by any other method. During this period, the Tribe and the State agree to share any hydrologic data available for use in connection with any test which the State undertakes to evaluate impacts, if any, of development of on-Reservation lands on off-Reservation lands. After July 1, 1993, the Tribe, or persons authorized by it, may develop the full 600 acres of land by any irrigation method.

c. Additional Water Right. In addition to the water right described in paragraph A.3.a. of this Article, the Tribe has a right to divert or use or permit the diversion or use from Rosebud Creek and its tributaries, for any purpose, of up to 19,530 acre-feet of water per year, or enough water to irrigate 6,510 acres of land per year, whichever is less, with a priority date of October 1, 1881. The Tribe may not exercise the water right set forth in this paragraph in a manner that adversely affects a water right finally decreed in any general adjudication of the Rosebud Creek basin or, until such final decree is issued, a water right recognized under state law, which 1) has a priority date of June 30, 1973 or earlier, and 2) is based on the use of an irrigation system in place and not abandoned as of June 30, 1973; provided, that the state law water rights protected in this paragraph shall not exceed:

i. North of the Reservation, 8,100 acre-feet of water per year or enough water to irrigate 2,700 acres of land per year, whichever is less; and

ii. South of the Reservation, 540 acre-feet of water per year or enough water to irrigate 180 acres of land per year, whichever is less.

d. Dams and Impoundments. The Tribe shall not construct, within the Rosebud Creek basin, any dams or impoundments to store water naturally arising in Rosebud Creek and its tributaries; provided, that the Tribe may construct stockwater impoundments pursuant to paragraph A.5. of this Article, and, subject to other applicable provisions of this Compact, may construct dams or impoundments within the Rosebud Creek basin to store water from sources outside the basin, including non-alluvial groundwater.

e. Moratorium on Permits. The Montana Department of Natural Resources and Conservation shall order a moratorium on the issuance of permits in the Rosebud Creek basin concurrent with the ratification date of this Compact. The moratorium shall not apply to applications for permits by persons who have entered into deferral agreements with the Tribe for Rosebud Creek basin water as provided in Section G. of this Article. The Department may order the moratorium lifted if it determines that water is available over and above the amount necessary to fulfill the Tribal Water Right described in paragraph A.3.a. and Section A.3.c. of this Article. The Tribe may challenge the Department's determination to lift the moratorium under the procedure set forth in Article IV of this Compact.

4. Groundwater.

a. Alluvial Groundwater. The Tribe has a right to withdraw and use, or permit the withdrawal and use of, alluvial groundwater in lieu of surface water diversions of the Tongue River and Rosebud Creek Tribal Water Right, subject to the same terms and conditions of this Compact that apply to such surface water diversions. Alluvial water withdrawn from wells or manifolded well systems with a capacity of 100 gallons per minute or less shall not be deducted from the Tribal Water Right. For wells or manifolded well systems with a capacity of withdrawing greater than 100 gallons per minute of alluvial water, the entire amount withdrawn shall be deducted from the Tribal Water Right.

b. Non-alluvial Groundwater. Except where a Tribal right to non-alluvial groundwater is established pursuant to Article VII.B. of this Compact, Tribal use or authorization of use of non-alluvial groundwater shall, at the election of the Tribe, comply with state law in effect at the time of the use or with the alluvial groundwater provisions of paragraph A.4.a. of this Article.

5. Stockwater Impoundments. The Tribe may construct, or permit the construction of, stockwater impoundments on the Reservation, where the capacity of the impoundment is less than 15 acre-feet and the impoundment is constructed on a source other than a perennial flowing stream. The amount of water so impounded shall not be deducted from the Tribal Water Right.

6. Subirrigation. The Tribe shall be entitled to take advantage of any natural subirrigation occurring on the Reservation. Where otherwise consistent with state law, persons outside the Reservation shall also be entitled to take advantage of natural subirrigation.

7. Big Horn Reservoir (Yellowtail) Storage.

a. Tribal Allocation. As a part of the Tribal Water Right, the Secretary of the Interior shall allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact. This allocation is subject to the prior reserved water rights, if any, of any Indian tribe, or of persons claiming water through that tribe, to that water. Any use or disposition of water from Big Horn Reservoir off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

b. Payment for Tribal Allocation. The Tribe shall not be required to make payments to the United States for any portion of the Tribal Water Right stored in Yellowtail Reservoir unless and until the water is used or sold by the Tribe in which case the Tribe shall make annual payments to the United States as hereinafter provided.

i. Use or Sale for Municipal and Industrial (M&I) Purposes. For each acre-foot of stored water used or sold for M&I purposes, the Tribe shall pay annually to the United States an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs, and the proportionate share of the capital costs with appropriate interest for the Yellowtail Unit allocable to the Tribe's stored water. Upon full payment of the capital costs allocable to the Tribe's stored water supply, the annual payments shall include only a proportionate share of the annual OM&R costs. Such annual payments shall be reviewed and adjusted, as appropriate, to reflect the actual capital and OM&R costs for the Yellowtail Unit.

ii. Agricultural, Domestic, Livestock, and Other Uses. For each acre-foot of stored water used or sold for other than M&I purposes, the Tribe shall pay annually to the United States an amount to cover the OM&R cost for the Yellowtail Unit allocable to the Tribe's stored water, which amount shall be reviewed and adjusted, as appropriate, to reflect the actual OM&R costs for the Yellowtail Unit. The Bureau of Indian Affairs shall transfer sufficient funds on a nonreimbursable basis to the Bureau of Reclamation to cover allocable OM&R costs under this paragraph.

c. Rates and Revenues. Except for payments required to be made to the United States as set forth above, the Tribe shall set such rates as it deems proper for its use or sale of stored water and shall retain all revenues from its use or sale of said stored water; provided, that the United States reserves the right to use any and all water stored in Yellowtail Reservoir for hydropower generation.

d. Agreement. Following ratification of this Compact, and upon development of a demand for the water under Section A.7. of this Article, the United States and the Tribe shall enter into an appropriate agreement, if required, setting forth the terms and conditions under which water will be made available to the Tribe, and for the collection and disposition of revenues in connection therewith.

B. Persons Entitled to Use the Tribal Water Right.

The Tribal Water Right may be used by the Tribe, or persons authorized to use water by the Tribe pursuant to Article III; provided, that:

1. Such use is in accordance with the terms of this Compact;

2. That the Tribe shall give preference to Tribal members to use the Tribal Water Right; and

3. Such water right may be transferred from one Tribal member to another Tribal member for agricultural purposes only upon the transfer of land on the Reservation from one Tribal member to another Tribal member.

C. Place of Use of the Tribal Water Right.

Pursuant to a Tribal water code adopted as prescribed in Article III of this Compact, and subject to all other provisions of this Compact, the Tribe shall have the right to use or permit use of the Tribal Water Right with any point of diversion or any place of use on or off the Reservation; provided, that any use of the Tribal Water Right off the Reservation shall not be deemed to convert the Tribal Water Right to a state water right, and subsequent nonuse of the Tribal Water Right off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the Right.

D. Purposes of the Tribal Water Right.

Except as provided in paragraph A.3.a. of this Article, the Tribe may authorize use of the Tribal Water Right on the Reservation for any purpose without regard to whether such use is beneficial as defined by state law. Off the Reservation, any use of the Tribal Water Right shall comply with Article III.B.

E. Conditions Upon Uses of the Tribal Water Right.

The Tribe shall adopt appropriate regulations to ensure that use of the Tribal Water Right is not wasteful and does not degrade water quality.

F. Transfer of Tribal Water Right.

The Tribe shall not transfer water naturally arising in Rosebud Creek or its tributaries for use off the Reservation. The Tribe may transfer any other part of the Tribal Water Right for use on or off the Reservation pursuant to the terms of this Compact. This paragraph shall not affect the right of the Tribe to enter into a deferral agreement regarding Rosebud Creek water pursuant to Section G. of this Article.

G. Deferral Agreements.

After the ratification date, the Tribe may enter into an agreement with any person who is exercising or proposing to exercise a right under state law to use surface water off the Reservation, which agreement protects the person's right from any exercise of the Tribal Water Right; provided, that:

1. Before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;

2. Subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;

3. The amount of water subject to the agreement shall be deducted from the amount of water available for depletion by the Tribe in the basin from which the water is being diverted; and

4. The agreement shall not permanently alienate the Tribal Water Right or any part thereof.

H. Effect of Non-Use of Tribal Water Right.

Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the Right.

I. Tribal Water Right to be Held in Trust.

The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

Article III

Administration of Water Rights

A. Tribal Administration.

1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be developed and adopted by the Tribe and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact. Pending the adoption and approval of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

2. Within six months after the Tribal water code takes effect, the Tribe shall provide the State with notice of each use of the Tribal Water Right, including uses in existence as of the ratification date of this Compact and those established since that time, which shall show:

a. The person authorized to make the diversion;

b. The amount of water authorized to be diverted annually;

c. The amount of water authorized for annual consumption;

d. The point of diversion;

e. The period of use;

f. The place of use;

g. The uses for which the water may be diverted; and

h. The relative priority of the use as against other uses of the Tribal Water Right.

3. The Tribe shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and groundwater authorized by the Tribe during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year. The notice shall be in the same format as that prescribed in Section A.2. of this Article.

4. The Tribe shall provide the State with not less than 180-days written notice prior to the start of construction of any project to divert any portion of the Tribal Water Right from the Big Horn River or the Big Horn Reservoir for use on the Reservation, or from the Tongue River or the Tongue River Reservoir for use on the Reservation in the Rosebud Creek basin. The notice shall describe: any diversion, conveyance and storage facilities; the amounts of water to be diverted and consumed; and the purpose, place, and period of the proposed use. Diversion or use of water from such project may be made only after all permits, certificates, variances or other authorizations described in paragraph

B.3. of this Article have been obtained. With respect to any such project or diversion, the State or any affected person may seek such remedies as may be available under federal, state, or tribal law, and nothing in this Compact shall be construed to affect the rights of any party under such law.

B. Off-Reservation Uses of the Tribal Water Right.

1. Off-Reservation Uses. Any use of the Tribal Water Right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided, that releases or diversions from Big Horn Reservoir or Tongue River Reservoir for use on the Reservation shall not be considered off-Reservation uses.

2. Subsequent Federal or State Law. All off-Reservation uses of the Tribal Water Right shall comply with the requirements set forth in Section B. of this Article until such time as the statutory or common law of the United States or the State of Montana establishes that off-Reservation uses of Indian water rights may occur without regard to state law.

3. Diversion Facilities.

With respect to diversion or transportation facilities located off the Reservation, the Tribe or persons using the Tribal Water Right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

4. Off-Reservation Uses in Tongue and Rosebud Basins.

a. The Tribe shall provide the State with not less than 180-days advance written notice of any off-Reservation use, transfer, or change of use of the Tribal Water Right:

i. Within the Tongue River basin, or

ii. Utilizing Tongue River water off-Reservation in the Rosebud Creek basin.

b. The notice shall include sufficient documentation to demonstrate that:

i. The proposed use of water is a beneficial use as defined by Montana law in effect at that time;

ii. The proposed means of diversion, and the construction and operation of the diversion works are adequate;

iii. The proposed use, transfer, or change of use will not adversely affect, except with the consent of the owner of such right:

A. Any water right arising under the laws of the United States, or

B. Any right to the use of water established pursuant to the laws of the State; except that, if the portion of the Tribal Water Right that is the subject of the proposed off-Reservation use, transfer or change of use is the storage and exchange right set forth in Article II.A.2.b. of this Compact, the Tribe need only demonstrate that Miles City Decree rights will not be adversely affected by such use, transfer, or change of use.

iv. The proposed use, transfer, or change of use does not cause any unreasonable significant adverse environmental impact; and

v. Proposed uses, transfers, or changes in use in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:

A. Substantially impair the quality of water for existing uses in the source of water from which the diversion is made;

B. Be made where low quality water which can economically be used is legally and physically available to the Tribe for the proposed use;

C. Create or substantially contribute to saline seep; or

D. Substantially injure fish or wildlife populations in the source of water from which the diversion is made.

c. A proposed use, transfer or change of use of the Tribal Water Right pursuant to Section B.4. of this Article may be challenged:

i. Within 30 days after the expiration of the notice period provided in Section B.4.a. of this Article;

ii. In a court of competent jurisdiction; and

iii. By the State or by a person whose rights are adversely affected by the proposed use, transfer, or change of use.

In any such case, the Tribe shall have the burden of proving by a preponderance of the evidence that it has satisfied the requirements of Section B.4.b. of this Article. A Tribal notice that conforms to the requirements of Section B.4.b. of this Article shall be prima facie evidence of its contents.

5. Off-Reservation Uses Outside Tongue and Rosebud Basins.

Except as provided in Section B.4. of this Article, no person may initiate an off-Reservation use, transfer, or change of use of the Tribal Water Right without first applying for and receiving authorization for the use, transfer, or change of use pursuant to Montana law in effect at the time of the application.

C. State Administration.

1. The State shall administer all rights to the use of surface water and groundwater within the Reservation which are not a part of the Tribal Water Right. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within one year after ratification of this Compact, the State shall notify the Tribe of all existing uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins. The notice shall state:

a. The person authorized to make the diversion;

b. The amount of water authorized to be diverted annually;

c. The amount of water authorized for annual consumption;

d. The point of diversion;

e. The period of use;

f. The place of use;

g. The uses for which the water may be diverted; and

h. The priority date of the use.

3. The State shall notify the Tribe within sixty days after the end of each quarter year of all new uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. The notice shall be in the same format as that prescribed in Section C.2. of this Article.

D. Operation of Tongue River Reservoir.

1. To provide for Tongue River Reservoir operation procedures that are consistent with the purposes of this Compact, a reservoir operation plan shall be developed by a five-member advisory committee. The committee shall have representatives from the State of Montana, the Tongue River Water Users Association, the Northern Cheyenne Tribe, the United States, and a fifth member to be selected by the other four. The advisory committee shall annually agree upon a reservoir operation schedule setting forth proposed uses of storage and direct flow for the year. The Department of Natural Resources and Conservation or its successor shall thereupon be responsible, consistent with the terms of this Compact and other applicable law, for the daily operation of the Reservoir and for implementation of the reservoir operation plan.

2. The reservoir operation plan shall provide for the operation of the project for fish and wildlife purposes depending on the availability of water on an annual basis. This provision shall not create an operational preference for fish and wildlife purposes relative to other project purposes.

3. The Secretary of the Interior shall pay annually to the State an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs for the Tongue River Dam allocable to the Tribe's stored water in the Reservoir.

Article IV

Northern Cheyenne-Montana Compact Board

A. Establishment of Board.

There is hereby established the Northern Cheyenne-Montana Compact Board. The Board shall consist of three members: one member appointed by the Governor of the State of Montana; one member appointed by the Northern Cheyenne Tribal Council; and one member selected by the other two members. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

B. Membership.

Should the two appointed members fail to agree on the selection of a third member within sixty days of the ratification date of this Compact or within thirty days after any vacancy occurs, the following procedure shall be utilized:

1. Within five days each member shall nominate three persons to serve as a member of the Board;

2. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

3. The chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member,

the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

C. Quorum and Vote Required.

Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

D. Jurisdiction of the Board.

The Northern Cheyenne-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water between users of the Tribal Water Right on the one hand and users of state water rights on the other hand. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, and disputes concerning the operation of the Tongue River Reservoir as it affects the Tribal Water Right.

E. Powers and Duties.

The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Tribe, the State, and the United States shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe, the State, or the United States for enforcing a subpoena issued by its courts in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy based on the evidence, and grant any appropriate relief, except money damages. All decisions of the Board shall be by majority and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection except for privileged information.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribe, the State, the United States and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.

2. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

a. The decision is not supported by substantial evidence;

b. The decision was procured by corruption, fraud or undue means;

c. There was evident partiality or corruption by the Board or by any member;

d. The Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

e. The Board exceeded its authority under the terms of this Compact; or

f. The decision is contrary to law.

3. Unless an appeal is timely filed as provided in paragraph F.1. of this Article, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribe, the State, the United States, or any party before the Board in the proceeding in which the decision was made.

4. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, may order such temporary or permanent relief as it considers just and proper.

5. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, in the manner and to the same extent as from orders or judgments of the court in a civil action.

6. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity.

The Tribe, the United States and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Northern Cheyenne-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe, the United States, or the State shall not extend to any action for money damages including costs and attorneys' fees.

Article V

Finality and Effectiveness of Compact

A. Ratification and Effectiveness of Compact.

1. Upon ratification by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of the parties; provided, that except as set forth in Section A.2. of this Article, this Compact shall not become effective until ratification by the United States Congress and the completion date occurs, notwithstanding the provisions of Section 85-2-702(2), MCA. If the completion date does not occur on or before December 31, 1997, or any later date agreed to in writing by the parties, this Compact, including all provisions that become effective on the ratification date, shall become null and void without further action by any party. Notwithstanding the provisions of Section 85-2-702(3), MCA, this Compact shall not be included in any preliminary decree or final decree in any State water court proceeding unless and until this Compact becomes effective as set forth in this Article.

2. As between the State and the Tribe, all of the provisions of this Compact shall become effective upon the ratification date except insofar as they:

a. Quantify or provide for the administration of the Tongue River Tribal Water Right;

b. Provide for the management or operation of the Tongue River Reservoir; or

c. Require Congressional authorization.

All of the provisions that do not become effective upon the ratification date shall become effective on the completion date, unless Congress provides otherwise.

B. Incorporation Into Decrees and Disposition of Federal Suits.

Within sixty days after the completion date, the parties shall petition for incorporation of this Compact into a decree in any appropriate State court proceeding commenced in accordance with 43 U.S.C. 666. Upon the issuance of a final decree by the State water court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall within thirty days execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in Northern Cheyenne Tribe of the Northern Cheyenne Reservation v. Adsit, et al., No. 75-6-BLG (D. Mont.); United States v. Big Horn Low Line Canal Company, et al., No. 75-34-BLG (D. Mont.); and United States v. Tongue River Water Users Association, et al., No. 75-20-BLG (D. Mont.), (hereinafter collectively referred to as "the federal suits"), with prejudice. This Compact shall be filed as a consent decree in the federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate, some or all of the water rights asserted in the federal suits.

Article VI

General Provisions

A. Nothing in this Compact shall be so construed or interpreted:

1. To establish the nature, extent, or manner of administration of water rights of any Indian reservation or other federal reservation other than the Northern Cheyenne Reservation;

2. To preclude the acquisition or exercise of a right to the use of water by the Tribe or any individual Indian outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribe or any individual Indian within the Reservation:

a. By purchase of such right or by purchase of land; provided, that water rights acquired by such purchase after the ratification date of this Compact shall be in addition to and shall become part of the Tribal Water Right and shall be governed by this Compact; or

b. By application to the State. Except for applications for non-alluvial groundwater pursuant to Article II.A.4.b., and applications for storage appropriations authorized by paragraph A.8. of this Article, any such application shall not be granted by the State until the Tribal Water Right in the basin where the diversion that is the subject of the application is located has been fully utilized;

4. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

5. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right which is vested under state or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To preclude or to discourage the Tribe from establishing the right to, or contracting for, water from any further enlargements of the Tongue River Dam, or from any future storage facilities that may be built within the Tongue River or Rosebud Creek basins, or in any other water basins;

9. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State; or

10. To alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

11. To prohibit the Tribe or the United States from challenging any claims to water in any general adjudication of the Tongue River or Rosebud Creek basins.

B. The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

C. The Secretary of the Interior shall comply with all aspects of the National Environmental Policy Act, 42 U.S.C. 4331-4335, and the Endangered Species Act, 16 U.S.C. 1531, et seq., and other applicable environmental acts and regulations in implementing this Compact.

Article VII

Tribal Relinquishment of Other Water Claims

A. With the exception of the Tribe's claim to non-alluvial groundwater in paragraph B. of this Article and any rights to water which may exist with respect to land held by the Tribe or a Tribal member outside the present Reservation, the Tribe and the United States as trustee for the Tribe hereby relinquish forever any and all claims, in existence on the ratification date of this Compact, to water within the State of Montana. The relinquishment includes, but is not limited to, any claim for water derived from aboriginal use of land or water, any Indian treaties, any Act of Congress, and any executive act of the United States.

B. The parties intend that the water right as confirmed to the Tribe in Article II is in full satisfaction of its federal reserved water right based on Winters v. United States, 207 U.S. 564 (1908). Notwithstanding the provisions of paragraph A. of this Article, the Tribe retains the right to assert a claim that it has a right, not based on the federal reserved water rights doctrine, to the use of any non-alluvial groundwater underlying the Reservation. In any such action, the Tribe shall be estopped to assert that its right to non-alluvial groundwater is a federal reserved water right, that the Tribal Water Right confirmed in Article II is inadequate to satisfy the purposes for which the Reservation was created, or from collaterally attacking this Compact in any manner. Any right to non-alluvial groundwater established by the Tribe under this paragraph is not subject to this Compact. Nothing in this Compact shall be construed to waive any defenses of the State or any water user to a Tribal claim for non-alluvial groundwater.

Article VIII

Binding Effect

Upon the effectiveness of any provision of this Compact, its terms will be binding:

A. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification, or authorization is to be determined by Montana law;

B. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by tribal law; and

C. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by federal law, and further provided that nothing contained in this Compact affects any claim of any Indian tribe, or of persons claiming water through that tribe, or the right of any Indian tribe, or persons claiming water through that tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

Article IX

Contributions to Settlement

A. The United States agrees to provide $31,500,000 to repair the Tongue River Dam and spillway and to raise the Tongue River Dam spillway crest to secure the Tribe's existing contract water under Article II.A.2.e. and to provide additional storage capacity to secure the Tribe's storage and exchange water right under Article II.A.2.b.

B. The State agrees to provide $16,500,000 to repair the Tongue River Dam and spillway with the understanding that the State's portion will be paid through a combination of cash and federal loans, in proportions to be agreed upon by the parties.

C. The Provisions of this Article are subject to the separate Letter of Agreement dated April 17, 1991, between the State and the United States explaining in detail the allocation of the costs of the project. The State and the United States will enter into a further agreement providing for the expenditure of the contributions and loans of the United States hereunder.

D. The United States agrees to provide $10,000,000 for a Tribal Development Fund payable in equal amounts of $2,000,000 each fiscal year for five years. These funds shall not be distributed on a per capita basis to members of the Tribe and shall only be used for land and natural resources administration, planning and development within the Northern Cheyenne Reservation or for land acquisition by the Tribe within the Northern Cheyenne Reservation.

E. Federal financial contributions to paragraph A of this Article will be budgeted for, subject to the availability of funds, by October 1 of the year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project. Federal financial contributions to paragraph D of this Article will be budgeted for, subject to the availability of funds, by October 1 of the second year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project.

F. The Tribe and the United States agree to pursue through the normal Bureau of Indian Affairs and Department of the Interior budget process such additional sums as are necessary to implement the terms of this Compact, to develop a Tribal water code, and to provide increased agricultural development on the Reservation. The State agrees to support the efforts of the Tribe and the United States in this regard.

Article X

Legislation

The Parties agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided, that no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Northern Cheyenne Tribe, and the United States have signed this Compact on the _____ day of _______________, 19___.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

....	....
Jack E. Galt, Chairman	Gene J. Etchart
....	....
Chris D. Tweeten, Vice Chairman	Dennis Iverson
....	....
Carl M. Davis	Senator Joseph P. Mazurek
....	....
Everett C. Elliott	Gordon McOmber

....
Gary L. Spaeth

FOR THE NORTHERN CHEYENNE TRIBE

....

FOR THE SECRETARY OF THE INTERIOR	FOR THE UNITED STATES ATTORNEY GENERAL
....	....

History: **En. Sec. 1, Ch. 812, L. 1991.**

85-20-302. Consent to federal act and modification of compact. (1) Pursuant to Article V, section A.1., of the Northern Cheyenne-Montana Compact, section 85-20-301, MCA, the Legislature hereby gives its consent to, ratifies, and adopts the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186). This consent includes:

(a) any amendment to the act that clarifies that environmental compliance costs for the Tongue River Dam Project are the responsibility of the federal government; or

(b) any amendment to section 4(c) of the act that provides that, except for the authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and 7(e), the authorization of appropriations in the act are not effective until such time as the Montana water court enters and approves a decree as provided in subsection 4(d) of the act.

(2) The provisions of the compact that are inconsistent with the federal act or with the amendments specified in subsections (1)(a) and (1)(b) of this section shall be deemed to be modified to the extent necessary to conform therewith.

History: **En. Sec. 1, Ch. 7, Sp. L. November 1993.**

Part 4

United States Park Service-Montana Compact

85-20-401. United States National Park Service-Montana compact ratified. The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Glacier National Park, see United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. §1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1 [and] the copy of the document entitled "Abstract of National Park Service Water Rights - BCNRA and LBBNM" referenced in this Compact as Appendix 2.

(2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.

(3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.

(4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.

(5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.

(6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.

(7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.

(8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.

(9) "Category 4 stream" means a stream that is treated individually due to special circumstances.

(10) "Consumptive use" means use of surface water not considered a non-consumptive use under (26) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.

(a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993 [, with respect to BHNB, GNP, or YNP and] on or before the effective date of the compact [with respect to BCNRA and LBBNM].

(b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993 [, with respect to BHNB, GNP, or YNP and] after the effective date of the compact [with respect to BCNRA and LBBNM].

(11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.

(12) "Crow Tribal Water Rights" means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.

(13) "Curtailment" means action pursuant to this Compact to reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.

(14) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(15) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States

Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(16) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.

(17) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.

(18) "Groundwater" means water that is beneath the ground surface.

(19) (a) "Hydrologically connected" for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.

(b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.

(20) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(21) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.

(22) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(23) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.

(24) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(25) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(26) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], or a water right recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, or YNP and] on or before the effective date of this compact [with respect to BCNRA and LBBNM], means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(27) "Parkman Sandstone" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(28) "Parties" means the State of Montana and the United States.

(29) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(30) "Quaternary Alluvium" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(31) "Quaternary Terrace Deposits" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(32) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(33) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(34) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(35) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(36) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(37) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

(38) "Unincorporated municipality" includes but is not limited to a rural special improvement district or any other entity that serves community water needs.

(39) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

(40) "Working Group Report" means the Abridged and Unabridged reports by Custer, S., et. al. dated January 5, 1993, and titled Recommended Boundary for Controlled Groundwater Area in Montana Near Yellowstone National Park and accompanying maps.

(41) "Yellowstone National Park" or "YNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved for Yellowstone National Park by the Act of March 1, 1872, 17 Stat. 32; Act of May 26, 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013 of October 20, 1932, 47 Stat. 2537.

ARTICLE II
IMPLEMENTATION

A. Abstract:

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights [for Big Hole National Battlefield, Glacier National Park, and Yellowstone National Park, and] prepared an Abstract, a copy of which is referenced as Appendix 2, which is a specific listing of all of the United States' water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234(4) and (7), MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

B. Method of Allocation of Water on Category 3 and 4 Streams and of Determining Rights Subject to Curtailment on the Little Bighorn River and its Tributaries:

This section explains the method of quantification of the reserved instream flow water rights of the United States for Category 3 and 4 streams and the method of calculating the quantity of consumptive use pursuant to state law within a basin to which the United States agrees to subordinate its reserved instream flow water right. The method set forth in this section shall be used to determine whether the limits on consumptive use pursuant to state law set forth in Article III have been reached and whether a water right on the Little

Bighorn River and its tributaries upstream from the LBBNM shall be subject to curtailment to satisfy the reserved instream flow water right for LBBNM. Addition to the Abstract of a reserved instream flow water right on a stream inadvertently omitted by the parties or reclassification of a stream due to a water right recognized under state law and inadvertently omitted by the parties shall be consistent with this section and shall not be deemed a modification of this Compact.

1. Allocation to Instream Flow:

With the exception of the reserved instream flow rights for LBBNM, the allocation of water to instream flow on Category 3 and 4 streams is arrived at using the following method as explained in general terms:

a. The United States' reserved water right for instream flow includes the entire flow of that stream within the State of Montana at the point where the stream flows over or forms the boundary of the specified reserved land after: (1) all consumptive use water rights of any agency of the United States recognized under federal or state law are satisfied; and (2) subordination of the reserved water right for instream flow to water rights recognized under state law as set forth in and limited by Article III and more specifically in the Abstract.

b. Actual use of water in Wyoming or Canada shall not diminish the quantity of water designated for consumptive use pursuant to state law as set forth in Article III.

2. Method of Calculation of Consumptive Use Rights Recognized Under State Law:

To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to consumptive uses has been reached, the following provisions shall apply:

a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under state law, of surface water tributary to the stream to the point it enters the reserved land. The limits on total consumptive use on a Category 4 stream that forms the boundary of the reserved land shall include all current and future consumptive use recognized under state law, of surface water tributary to the stream to the most downstream point that the stream forms the boundary of the reserved land.

b. Groundwater: [The following sections i., ii., and iii. shall apply to BHNB, GNP, and YNP.] The following sections iii. and iv. shall apply to BCNRA. The following sections iii. and v. shall apply to LBBNM.

i. An exemption from state permit requirements for wells or developed springs shall not apply to appropriations within a basin tributary to the reserved portion of a Category 3 or 4 stream after the effective date of this Compact, provided that the registration process set forth in Article II, section B.2.b.ii.(3)(b) shall apply to applications for a permit for a well of 35 gpm or less, not to exceed 10 acre-feet per year. In addition, all groundwater appropriations within the Yellowstone Controlled Groundwater Area shall be subject to Article IV.

ii. The calculation of total consumptive use on a Category 3 or 4 stream shall include appropriations of groundwater as follows:

(1) Pre-January 1, 1993: An appropriation of groundwater with a priority date before January 1, 1993, shall not be included in the calculation of total consumptive use.

(2) January 1, 1993 - Effective Date: An appropriation of groundwater with a priority date on or after January 1, 1993, but before the effective date of this Compact shall be included in the calculation of total consumptive use if the following procedural requirements are met and the appropriation is found to be hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream.

(a) Within 120 days after the effective date of this Compact, the Department shall provide the United States with notice of all groundwater appropriations in drainages tributary to the reserved portion of a Category 3 or 4 stream that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

(b) Up to 120 days following mailing of such notice the United States shall provide the Department with credible information that a groundwater appropriation included in the notice is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(c) Within 60 days of receipt of such information, the Department shall issue an order stating that (1) the appropriation is hydrologically connected to surface water tributary to the Category 3 or 4 stream; and (2) the action to be taken with respect to the appropriation. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order. If credible information of hydrologic connection has not been provided by the United States, the Department shall issue an order stating its determination and reasons therefore.

(d) If the appropriator enters an appearance to contest the order, the Department shall (1) issue an order staying use of the appropriation pending a final decision on the matter by the Department only if the limits on total consumptive use for that drainage have been reached; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, provided that the burden of proving hydrologic connection shall be as set forth in Article II, section B.2.b.[ii.](3). The Department shall, whenever possible, consolidate any proceedings on the groundwater application pursuant to Article IV with any proceeding made necessary by this Article.

(3) Post-Effective Date: An appropriation of groundwater recognized under state law with a priority date after the effective date of this Compact shall be included in the calculation of total consumptive use if the following conditions apply:

(a) Wells in excess of 35 gallons per minute or 10 acre-feet per year: The limit on total consumptive use shall include groundwater appropriation by a well or developed spring with a permit amount in excess of 35 gpm or any well with a volume of use greater than 10 acre-feet per year, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the applicant is able to show by a preponderance of the evidence that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(i) The applicant shall submit credible information, including a report to the Department prepared by a professional qualified in the science of groundwater hydrology verifying that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream. If the applicant fails to submit the report, the application shall be considered defective and shall be returned to the applicant for completion as provided by state law.

(ii) The Department shall provide notice of the proposed appropriation and a copy of the report to the United States concurrent with notice pursuant [to] 85-2-307, MCA.

(iii) Within 60 days of the mailing of notice, the United States shall file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(iv) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. In doing so the Department shall make a specific finding on the adequacy of the report provided by the applicant.

(v) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(b) Wells of 35 gallons per minute or less and 10 acre-feet per year or less:

(i) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the department.

(ii) The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing. Within 30 days of the receipt of notice, the United States may file an objection to the application on the basis that the proposed appropriation is of groundwater that is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(iii) As long as the limit on consumptive use rights for a Category 3 or 4 stream has not been reached, the calculation of total consumptive use shall not include groundwater appropriations by well or a developed spring of 35 gallons per minute or less that do not exceed 10 acre feet per year unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(iv) After the limit on consumptive use rights has been reached on a particular stream, the necessary showing by the United States' shall be to file an objection and come forward with credible information showing that the proposed appropriation is hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. If the United States makes such a showing, the Department shall consider the application under the criteria in Article II, section B.2.b.[ii.](3)(b)(v) and (vi).

(v) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream.

(vi) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

iii. Within 2 years after the effective date of this Compact, the Department, in consultation with the United States, is directed to promulgate rules as may be necessary to implement Article II, section B.2.b. Said rules shall not alter the rights or obligations of the parties hereto.

iv. The calculation of total future consumptive use on Category 3 or 4 streams at BCNRA shall include appropriations of groundwater as follows:

(1) The calculation of total future consumptive use shall not include appropriation of groundwater by means of a well or developed spring with an appropriation of 35 gallons per minute (gpm) or less that does not exceed 10 acre feet per year (afy).

(2) The limit on total consumptive use shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

v. Determination of whether an appropriation of groundwater after the effective date of the this Compact shall be subject to a curtailment to satisfy the instream flow water right at LBBNM shall be made as follows:

(1) Groundwater appropriations subject to curtailment shall not include an appropriation of groundwater for stock or domestic purposes by means of a well or developed spring with an appropriation of 35 gpm or less that does not exceed 10 afy.

(2) Groundwater appropriations subject to curtailment to satisfy the 51 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States

shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(d) If the proposed appropriation is determined to be hydrologically connected to surface water the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.

(3) Groundwater appropriations subject to curtailment to satisfy the 950 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM and the appropriation is completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water and the proposed appropriation is to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water or not to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(d) If the proposed appropriation is determined to be hydrologically connected to surface water and to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.

c. Effect of Decree in Calculation of Consumptive Use: Except as provided in Article II, section G., for the purposes of this Compact, the flow rate of a consumptive use shall be as finally decreed in a general adjudication, or recognized under state law until such final decree. At each stage in an adjudication, the allocation to current use as set forth in Article III and more specifically in the Abstract shall be adjusted to reflect the decreed amount.

d. Abandonment: When a consumptive use right recognized under state law on a Category 3 or 4 stream is abandoned and such abandonment causes water to become available for appropriation within the limits of the total amounts of water allocated to consumptive use rights recognized under state law established for that stream by Article III, the increment of water below that limit is available for new appropriation in accordance with state law and this Compact. State law governs the issue of whether an abandonment has occurred.

e. Non-Consumptive Use: The limit on total consumptive use rights recognized under state law shall not include non-consumptive uses as defined by this Compact.

C. Subordination of Instream Flow Right:

1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved water right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may be initiated in a state or federal court of competent jurisdiction pursuant to Article II, sections I and K.

2. The reserved water rights described in this Compact shall not be subordinate to water rights which were forfeited by 85-2-212 [or] 85-2-226 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact, provided that water allocated to future consumptive use pursuant to Article III[B.] of this Compact may be used to satisfy claims filed pursuant to 85-2-221(3), MCA in order of priority.

D. Location of Instream Flow Rights: The United States' reserved water rights for instream flow apply to the portion of the Categories 1 through 4 streams specified in this Compact that flow over or form the boundary to reserved land administered by the National Park Service.

E. Change in Instream Flow Right: Except as provided in Article II, section J.2.b., the water rights dedicated to instream flow by this Compact shall not be changed to any other use.

F. Prohibition on Future Impoundments: With the exception of the North Fork of the Big Hole River and its tributaries, no new impoundments may be permitted on the mainstem of a Category 2, 3, or 4 stream upstream of, or along, the portion of the stream for which a water right for instream flow is described in this Compact [and] no new impoundments may be permitted on the mainstem of the Little Bighorn River in Montana upstream of the LBBNM after the effective date of this Compact. This prohibition shall include impoundments that are exempt from permit requirements under state law. Reclamation, repair or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that without the consent of the United States, reclamation, repair or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment. This prohibition shall not apply to impoundments constructed to store a Tribal water right or to implement settlement of litigation regarding quantification of a Tribal water right. On Category 3 and 4 streams for which an instream flow right is described for periods of low flow as set forth in Article III, sections G.3.c. and d., such water right has not been subordinated to a new water right with the method of diversion as an impoundment on the mainstem of the stream with a priority date on or after January 1, 1993, but before the effective date of this Compact.

G. Management to Maximize Use by Montana Water Users of the Water Allocated to Consumptive Use Rights Recognized Under State Law: If any type of conservation or water distribution plan which includes measurement of actual water use, including use pursuant to rights recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, and YNP and] before the effective date of this compact [with respect to BCNRA and LBBNM], is adopted pursuant to state law, the limits established for consumptive use appropriated pursuant to state law shall apply to actual measured use, not permitted and decreed or claimed rights, provided that records of actual use be made available to the United States on request and provided further that, such plan shall not diminish the reserved water right of the United States as described in this Compact.

H. Basin Closure

1. Except as provided in Article II, section B.2.d., in the following drainage basins upstream of the portion of the stream for which a reserved water right for instream flow is described in this Compact, the Department shall not process or grant an application or registration for a permit to appropriate or to reserve water for future consumptive use as defined by this Compact once the limits on consumptive use tabulated in Article III and set forth more specifically in the Abstract are reached:

Big Hole National Battlefield:
  North Fork of the Big Hole River
Big Horn Canyon National Recreation Area:
  Dry Head, Deadman, Davis and Layout Creeks
Glacier National Park:
  North Fork of the Flathead River
  Middle Fork of the Flathead River
Yellowstone National Park:
  Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little
  Cottonwood, Snowslide, Crevice, Dry Canyon, Slough, Tepee, and
  Soda Butte Creeks, and the Gallatin, Madison, and Yellowstone Rivers

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

I. Enforcement of Water Right

1. The United States, the state, or the holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under

state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a federal reservation for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the federal reservation, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of instream flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department or the Bureau may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department or Bureau shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for instream flow described in this Compact. The United States shall install and maintain a rated gauge to measure instream flows in the Little Bighorn River. The gauge on the Little Bighorn River shall be on the reach of the river which forms the boundary of the LBBNM, the exact location of which shall be at the discretion of the NPS. The NPS shall resurvey the channel cross section as necessary to maintain gauge accuracy, but in any event not less frequently than every three (3) years. The United States may not seek curtailment of junior water uses unless the channel has been resurveyed within three (3) years of the date on which curtailment is sought.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law, including but not limited to, revocation of a permit issued pursuant to Article IV after the effective date of this Compact.

7. For any appeal to state court of an administrative decision authorized by this Compact, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

8. In any contested case proceeding held under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code

Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

J. Change in Use

1. Change in Use Defined: For the purpose of this Article, the following actions affecting the use of a reserved water right for consumptive use described in this Compact shall be considered a change in use:

a. An action that alters type of use, place of use, point of diversion, place or means of storage, period of use or point of return flow that will:

i. increase the net depletion on a source; or

ii. adversely affect water quality at the point the reserved water right ends; or

iii. result in a change in point of diversion or point of return flow relative to a holder of a water right recognized under state law; or

iv. change the point of diversion from groundwater to surface water, or from surface to groundwater; or

v. in any other manner, adversely affects the reasonable exercise of a water right that is recognized under state law.

b. The exercise of a reserved water right to future consumptive use as authorized by this Compact shall not be considered a change in use.

2. Instream flow: Reserved water rights specified in this Compact for instream flow shall not be subject to change to any other use, provided that:

a. the emergency use of water for fire suppression as provided for in Article III.H. shall not be deemed a change or alteration in use, or violation of a reserved water right for instream flow; and

b. the United States may seek to appropriate water for a consumptive use on a source for which no consumptive use is described in this Compact by seeking a permit under state law for consumptive use, provided that the water right granted shall not be counted against the limits on allocation for state consumptive use water rights imposed by this Compact. The water right so acquired shall be administered in accordance with Article V, section B.

3. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that (1) the action shall be in fulfillment of the purposes of the reservation; (2) the total use shall not exceed the amount described in this Compact; and (3) the action shall not adversely affect a water right that is recognized under state law.

4. Notice of intent to change use: At least 180 days prior to a change in use, the United States agrees to provide notice to the Department.

a. The notice shall contain the facts pertinent to the proposed change including, where applicable:

i. The location of a new point of diversion.

ii. The new source of water.

iii. The new means of diversion.

iv. If a well is involved, the depth and locations of the old and new well.

v. The new use and its impact on actual consumption and water quality.

vi. If the change includes storage, the location, period and capacity of the storage facility.

vii. An estimate of when the change will be effective.

viii. A map showing the existing system and the proposed change.

b. At least 120 days prior to the proposed change, the United States agrees to publish the notice required by Article II, section J.4.a. with a statement that within 60 days following publication or service of notice, relief may be sought in a state or federal court of competent jurisdiction, once in a newspaper of general circulation in the area of the source, and to serve the notice by first-class mail on interested and potentially affected persons as identified by the records of the Department, including:

i. an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation;

ii. a purchaser under contract for deed that, according to the records of the Department, may be affected by the proposed appropriation;

iii. any public agency that has reserved water in the source recognized under state law; and

iv. a federal agency or Tribe that claims a reserved water right or other water rights in the source.

c. On request by the United States, the Department shall provide the information contained in its records identifying any person potentially affected by the proposed change. The United States agrees to reimburse the Department for the expense of providing this information.

d. In the event that future changes in state law establish a method of notice of a proposed change in use to interested and potentially affected persons other than by first-class mail, the United States may alter the method of notification accordingly.

e. Prior to the actual change, the United States agrees to provide the Department with proof of notice by affidavit.

5. Objection to proposed change: Within 60 days following the notice pursuant to Article II, section J.4.b., the Department or any other person may bring an action against the proposed change in use in a state or federal court of competent jurisdiction, if a property right, water right, or other interest protected under state law would be adversely affected, or if the proposed change is not in compliance with this Compact.

6. Notice of Change:

a. The United States agrees to notify the state and provide a copy of the final order within 60 days of its entry by a state or federal court of competent jurisdiction resolving any objections to the change in use of a federal reserved water right described in this Compact,

b. The United States agrees to provide the state with notice of completion of the change within 60 days after the completion.

7. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Section III.H. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact, regardless of whether the action is deemed a change in use pursuant to Article II, section J.1.; (2) the initiation of new uses that were completed during the preceding year; and (3) any data and documents generated or received by the National Park Service during the preceding year on measurement of instream flow on a Category 3 or 4 stream.

8. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of: (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact; (2) new permits issued during the preceding year according to the records of the Department; and (3) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to Category 3 or 4 streams.

K. Administration of Little Bighorn Instream Flow

This section governs the administration of instream flow rights of the United States on the Little Bighorn River described in Article III. section E.3., in relation to junior water rights initiated after the effective date of this Compact to which the United States has not subordinated and which are not a part of the Crow Tribal Water Rights. Nothing in these provisions, or in this Compact, regarding administration affects or in any way impairs any ability or authority of the Crow Tribe to administer, regulate or manage any water rights within the boundaries of the Crow Indian Reservation.

1. For purposes of administering the instream flow water right of the United States described in Article III. section E.3. the United States shall establish and maintain a discharge gauge at the LBBNM gauge site. The United States shall keep a record of daily flows for the period from March 1 through June 30 of each year in which the United States seeks curtailment of junior water rights.

2. The United States may seek curtailment to enforce its 950 cfs instream flow water right, described in Article III. section E.3.b., at the LBBNM gauge site any time from May 1 through June 30. The decision to seek curtailment shall be initiated by the NPS and at the NPS's discretion.

a. A decision to seek curtailment to enforce the 950 cfs instream flow water right shall be based on a determination that the flow at the LBBNM gauge site plus claimed or permitted appropriations by non-subordinated junior water users equals 950 cfs or more.

b. Once curtailment is sought and confirmed as set forth in Article II. section K.3, it may last for up to 15 consecutive days, or through June 30, whichever occurs first, provided, however, that the 15 days shall be reduced by subtracting the number of days between March 1st and the date of confirmation of curtailment that the flow at the LBBNM gauge site has equalled or exceeded 950 cfs.

c. Any curtailment based upon the 950 cfs water right shall be limited to direct surface diversions from the Little Bighorn River and its tributaries, and wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone, as described in Article II. section B.2.b.v.(3).

3. Notice by NPS that it seeks curtailment to enforce the 950 cfs instream flow water right shall be by either written or verbal notice to the appropriate DNRC office. The NPS shall use its best efforts to maintain contact with the DNRC beginning May 1st of each year to provide advance warning of stream flow conditions.

a. Upon receipt of notice from the NPS that the United States requests curtailment to enforce the 950 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users and confirm that the sum of flow at the LBBNM and actual diversions by non-subordinated junior water users equals or exceeds 950 cfs. If the DNRC determines that the actual diversions are insufficient to bring the flow at the LBBNM gauge site to 950 cfs, it shall not proceed with curtailment. If a decision is made not to proceed with curtailment, the DNRC shall notify the NPS the same day. After notification, the NPS may again seek curtailment beginning the following day if conditions of flow and time of year meet the conditions set forth in Article II. section K.2.

b. If the DNRC proceeds with curtailment to enforce the 950 cfs water right, the DNRC shall, without delay, shut off non-subordinated junior water uses in reverse order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 950 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 950 cfs instream flow right would be futile.

c. Should flow at the LBBNM gauge site exceed 950 cfs at any time during curtailment, the DNRC may reopen diversions in order of priority until 950 cfs is reached. Should the flow at the LBBNM gauge site drop below 950 cfs at any time during the curtailment, non-subordinated junior water uses shall remain shut off provided that, if the NPS reasonably determines the flow at the LBBNM gauge site is not likely to come back up to 950 cfs during the remainder of the curtailment period, it may consent to end the curtailment.

4. Notice by NPS that it seeks curtailment to enforce the 51 cfs instream flow water right described in Article III. section E.3.a., shall be by either written or verbal notice to the appropriate DNRC office. Upon receipt of notice from the NPS that the United States requests a curtailment to enforce the 51 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users. If diversions are being made by non-subordinated junior water users, the DNRC shall, without delay, shut off non-subordinated junior water uses in order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 51 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 51 cfs instream flow right would be futile.

5. All permits within the Little Bighorn River Basin upstream of the LBBNM gauge site with a priority date after the effective date of this Compact shall be conditioned on the prior right of the NPS for 950 cfs instream flow water right at the LBBNM during May and June, and for the 51 cfs instream flow water right during any portion of the year, and on the authority of DNRC to curtail use to satisfy the instream flow right.

6. All diversions from the Little Bighorn River or its tributaries above LBBNM with a priority date after the effective date of this Compact, shall have

the duty to establish and maintain a controllable headgate and an adequate measuring device and shall also be required to maintain a record of daily water diversions, including noting the number of hours for which diversions are made for each day and the flow rate at which water is diverted.

7. DNRC and NPS shall work together to develop a quantitative prediction relationship between the flow at the LBBNM gauge site, diversions by non-subordinated junior water users, and the prediction of curtailment requirements.

8. Either party has the right to petition a court of competent jurisdiction for administration of water rights or for appointment of a water commissioner should cooperative administration not be proceeding as planned or should cooperative administration become burdensome. Any water commissioner shall enforce the curtailment as described in this Compact. Exhaustion of administrative remedies pursuant to this Article is not a prerequisite to any such suit.

ARTICLE III
WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this agreement recognize that the water rights for these NPS Units [BCNRA and LBBNM] are junior to Crow Tribal Water Rights. All reserved water rights described in this Article are subject to Article V, section A.

A. Big Hole National Battlefield

1. Priority Date

The United States has a priority date of June 29, 1939 for the reserved water rights described in this Compact for BHNB.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of the BHNB as set forth in Table 1. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNB shall include any non-reserved land within BHNB boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1
United States National Park Service
Big Hole National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Visitor center		
Museum		
Maintenance area		
Residences		
Picnic area		
Irrigation		
Total for all use	7.14	50

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNB. The United States has a reserved water right for instream flow on the North Fork of the Big Hole River where it flows over the reserved land of BHNB. The reserved water right for instream flow is quantified and defined as follows:

a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNB in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

TABLE 2
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of the
North Fork of the Big Hole River

Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

4. Nothing in this Compact may affect an existing right to divert water from a point within BHNB and transport it for use off BHNB.

B. Bighorn Canyon National Recreation Area

1. Priority Date: The United States has a priority date of October 15, 1966 for the water rights described in this Compact for Bighorn Canyon National Recreation Area. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.

2. Consumptive Use: The United States has water rights for current and future consumptive use for the purposes of the Bighorn Canyon National Recreation Area (BCNRA) as set forth in the following Table [3]. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract.

TABLE 3
United States National Park Service
Bighorn Canyon National Recreation Area Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Fort Smith Visitor center	17.6	110
Ok-A Beh/Marina	6.9	35
Grapevine Creek Overflow Campground	12.5	110
Barry's Landing, Trail Creek, Chain Canyon	29.3	180
Bighorn River Ranch	4.7	35
Layout Creek Ranger Station, Sorenson Ranch	140.4	230
Lockhart Ranch	25.6	110
Hillsboro Site	11.0	230
Stock and Wildlife Watering	3.5	
Total Volume of Use:	251.5 acre-feet	

3. Instream Flow

The United States has water rights for instream flow in the streams which flow over the land of Bighorn Canyon National Recreation Area. These water rights for instream flow are quantified and defined as follows:

a. Category 1a:

i. Identification: The following streams are designated as "Category 1a": North Fork Trail Creek, South Fork Trail Creek, and Trail Creek.

ii. Instream Flow: The United States has a water right for instream flow on the Category 1a streams where they enter the BCNRA in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact and any Crow Tribal Water Rights; and (2) all water rights appurtenant to nonfederal land within the boundaries of BCNRA recognized under state law and having a priority date before the effective date of this Compact.

In the event that all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to BCNRA, the stream may be reclassified as a Category 1 stream at the request of the United States.

b. Category 3:

i. Identification: The following streams are designated as "Category 3": Dry Head Creek, Deadman Creek, Davis Creek (aka Medicine Creek), and Layout Creek.

ii. The United States has a water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, and any Crow Tribal Water Rights, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before the effective date of this Compact, plus any future consumptive use rights calculated according to Article II of this Compact until the limit on future consumptive use set forth in the Table [4] below is reached; (2) any use considered non-consumptive as defined by this Compact; (3) any use for instream stockwatering or for stockwater or domestic uses by wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.

TABLE 4
State Law Based
Total Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Category 3 Streams

Dry Head	Deadman	Davis	Layout
2.23*	1.59**	0.50	0.11

*Or the amount of net depletions reasonably necessary to irrigate 20 acres, whichever is largest.

**Or the amount of net depletions reasonably necessary to irrigate 35 acres, whichever is largest.

c. Category 4:

i. Identification: The following streams are designated as "Category 4": Pete's Canyon Creek, the tributary of Deadman Creek that issues from Annerer Spring and flows across BCNRA land in the N1/2NW1/4 Sec. 8, T8S, R29E, M.P.M.

(1) The United States has a water right for instream flow on Pete's Canyon Creek in the amount of one-half (1/2) of the naturally occurring flow that originates from Pete's Spring.

(2) The United States has a water right for the tributary of Deadman Creek, in the amount of one (1) gallon per minute.

4. Springs

The United States has a water right for instream flows for the following springs identified by location, in the amount of the entire flow of the springs, less any consumptive use rights of the United States described by this Compact.

Sorenson Spring	Sec. 09, T9S, R28E
Lockhart #1 Spring	Sec. 13, T8S, R28E
Lockhart #2 Spring	Sec. 13, T8S, R28E
Hillsboro Spring	Sec. 36, T8S, R28E

This list of springs may be modified based on field verification of any spring located entirely within the boundaries of the BCNRA that is not the source of a water right recognized under state law. Springs that occur on Crow Reservation lands are excluded from any water rights for springs.

C. Glacier National Park

1. Priority Date

The United States has a priority date of May 11, 1910 for reserved water rights described in this Compact for GNP. The United States recognizes that this date is junior to the priority dates for reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and the Blackfeet Tribe of the Blackfeet Indian Reservation.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 5. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at GNP shall include any non-reserved land within GNP boundaries as the boundaries exist on the effective date of this Compact.

TABLE 5
United States National Park Service
Glacier National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
North Fork Flathead River Basin		
Station, campground	4.7	70
Backcountry Use	1.98	
Backcountry Patrol Cabins	2.06	55
Middle Fork Flathead River Basin		
McDonald Creek areas	246.00	1720
Middle Fork areas	0.70	10
Backcountry Use	2.42	
Backcountry Patrol Cabins	2.06	55
Saint Mary River Basin		
Northern Border areas	2.20	20
Many Glacier areas	166.40	600
Saint Mary areas	128.40	915
Backcountry Use	2.02	
Backcountry Patrol Cabins	1.50	40
Two Medicine River Basin		
Two Medicine areas	6.40	70
Backcountry Use	0.38	
Backcountry Patrol Cabins	0.19	5
Cut Bank River Basin		
Backcountry Use	0.18	
Backcountry Patrol Cabins	0.19	
Milk River Basin		
Backcountry Use	0.02	
GNP TOTAL	567.80	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Sage, Spruce, Kishenehn, Starvation, Kintla, Red Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, Valentine, Kootenai, Pass, Camp, Cleveland, Street, Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two Medicine, Fortymile, Fortyone Mile, Midvale, Railroad, Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch, Pyramid, Thunderbird and Upper Summit Creeks and Waterton, St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

(a) The United States has a reserved water right for instream flow on the Category 1a streams in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact; and (2) all water rights appurtenant to non-federal land within the boundaries of GNP recognized under state law with a priority date before January 1, 1993. This reserved water right ends at the most downstream point that the stream exits the reserved land of GNP.

(b) In the event all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to GNP, the stream may be reclassified as a Category 1 stream at the request of the United States.

c. Category 4 Streams

i. Identification:

The following streams are designated as Category 4: the North Fork of the Flathead River, the Middle Fork of the Flathead River, Divide, Jule, Rubideau and Wild Creeks.

ii. Instream Flow for the North and Middle Forks of the Flathead River:

The United States has a reserved water right for instream flow on the North and Middle Forks of the Flathead River in the amount of the entire flow of the rivers, less any United States' consumptive use rights described in this Compact provided that, the instream flow water right is subordinate to 1) all water rights recognized under state law with a priority date before January 1, 1993, 2) future consumptive use rights calculated according to Article II up to the limits set forth in Table 6; (3) any use considered non-consumptive as defined by this Compact; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II. This reserved water right ends at the most downstream point that the River forms the boundary of the reserved land of GNP.

TABLE 6
State Law Based
Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
May	#	#
June	#	#
July	40.5	#
Aug.	16.2	13.7
Sept.	11.8	9.7
Oct.	11.8	10.6
Nov.	12.0	11.6
Dec.	9.0	9.2

# The amount of water available for future consumptive use in these months shall be an amount equivalent to the flow rate for all consumptive uses recognized under state law on December 31, 1992. The amount shall be adjusted to reflect the flow rates in a decree issued by a state or federal court of competent jurisdiction after December 31, 1992. At such time as final decrees are entered in these basins, the Department shall tabulate these rights, insert the appropriate amounts into Table 6, and submit the revised Table to the United States and the state for inclusion in this Compact. Revision of Table 6 to reflect this agreement shall not be deemed a modification of this Compact.

iii. Instream Flow for Divide, Jule, Rubideau and Wild Creeks

The United States has a reserved water right for instream flow on Divide, Jule, Rubideau, and Wild Creeks in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact. This water right ends at the most downstream point that the stream exits or no longer forms the boundary to the reserved land of GNP. This right is subject to the provisions of Article V, section A., and (1) on Divide Creek, is subordinate to any water rights recognized under state law with a priority date before

January 1, 1993; and (2) on Rubideau Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993, provided that the use of such right is consistent with federal law.

4. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of GNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth specifically in the Abstract.

D. Grant Kohrs Ranch National Historic Site

The Grant Kohrs Ranch National Historic Site in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

E. Little Bighorn Battlefield National Monument

1. Priority Date

a. The United States has a priority date of December 7, 1886 for current and future consumptive uses under the water rights reserved for the irrigation, maintenance and administration of the Little Bighorn Battlefield National Monument. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.

b. The United States has a priority date of March 22, 1946 for the instream flow water rights reserved for use as part of the Little Bighorn Battlefield National Monument, and necessary for historical interpretation of the battle. The United States recognizes that its water rights for the LBBNM are junior in priority to Crow Tribal Water Rights.

2. Consumptive Use

a. The United States has a reserved water right for current and future consumptive uses for the purposes of LBBNM as set forth in Table 7. The period of use shall be from January 1 through December 31. The place of use or point of diversion of a consumptive use water right at LBBNM shall include any non-reserved land within LBBNM boundaries as the boundaries exist on the effective date of this Compact.

TABLE 7
United States National Park Service
Little Bighorn National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)	Source
Cemetery, Visitors Center, Administrative Offices, Residences, Historic Buildings Maintenance Area, and Firehouse Facilities.	84.9	450	ground-water well

3. Instream Flow

The United States has a reserved water right for instream flow on the Little Bighorn River where it forms the boundary of the Little Bighorn Battlefield National Monument as follows:

a. The United States has a reserved water right for minimum instream flow in the amount of 51.0 cfs with a priority of March 22, 1946, for the period January 1 through December 31, provided that, the instream flow water right is subordinate to:

(1) any water rights recognized under the state law with a priority date before the effective date of this Compact;

(2) any instream stockwater use;

(3) any use of groundwater through wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy;

(4) any use considered non-consumptive as defined by this Compact;

(5) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.

b. The United States has a reserved water right for instream flow in the amount of 950 cfs, with a priority date of March 22, 1946, for 15 days during the period of May 1st through June 30th, subject to the terms and conditions regarding implementation as set forth in Article II, section K, provided that, the instream flow water right is subordinate to:

(1) any water rights recognized under the state law with a priority date before the effective date of this Compact;

(2) any instream stockwater use;

(3) any use of ground water from wells completed outside of the Quaternary Alluvium or Quaternary Terrace Deposits of the Little Bighorn River and its tributaries or the Parkman Sandstone;

(4) any use of groundwater from wells or developed springs completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with an appropriation of 35 gpm or less that does not exceed 10 afy;

(5) any use of groundwater from wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with a permit amount in excess of 35 gpm or 10 afy that is not determined to be hydrologically connected to the Little Bighorn River or its tributaries pursuant to Article II. section B.2.b.v. of this Compact;

(6) any use considered non-consumptive as defined by this Compact.

c. Instream Flow Rights Not Cumulative: The 950 cfs instream flow, when it occurs, is not additive to the 51.0 cfs year-round minimum flow.

F. Nez Perce National Historical Park

The Nez Perce National Historical Park in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

G. Yellowstone National Park

1. Priority Date

The United States has a priority date of March 1, 1872 for the reserved water rights described in this Compact for YNP.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of YNP as set forth in Table 8. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 8
United States National Park Service
Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Yellowstone River Basin		
North Entrance	1.70	35
Stephens Creek facilities	12.00	50
TW facilities (Gardiner)	58.70	300
NE Entrance	15.60	50
Backcountry Use	10.70	
Backcountry Patrol Cabins	2.00	15
Day Use Areas	2.40	6
Gallatin River Basin		
NW Entrance Area	15.00	50
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.60	6
Madison River Basin		
West Entrance	48.90	200
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.70	6
YNP TOTAL	174.90	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the Gardner River.

ii. Instream Flow:

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

b. Category 2:

i. Identification:

The following streams are designated as "Category 2:"

Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, and Snowslide Creeks.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 2 streams in the amount of the entire flow of the streams, less any consumptive use rights of an agency of the United States recognized under federal or state law. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

iii. Change in Wilderness Designation

In the event that the Congress of the United States repeals the Wilderness designation assigned to the headwaters of an above named Category 2 stream, then, to the extent consistent with the law repealing the Wilderness designation as it pertains to water use, the stream headwatered in the former Wilderness may be reclassified in the appropriate category on request by the state.

c. Category 3:

i. Identification:

The following streams are designated as "Category 3:"

Crevice, Dry Canyon, Slough, and Tepee Creeks.

ii. The United States has a reserved water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use set forth in Table 9 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 9
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Category 3 Streams

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Teepee Creek
Jan.	0.2	0.1	1.5	0.3
Feb.	0.2	0.1	1.6	0.3
Mar.	0.3	0.1	1.9	0.4
April	1.1	0.2	5.6	1.2
May	3.8	1.3	19.8	4.5
June	3.4	1.2	22.4	5.3
July	1.0	0.3	7.3	1.7
Aug.	0.4	0.2	2.9	0.8
Sept.	0.4	0.1	2.3	0.6
Oct.	0.4	0.1	2.4	0.6
Nov.	0.3	0.1	2.1	0.5
Dec.	0.2	0.1	1.8	0.4

iii. The provisions of Article III, section G.3.c.ii notwithstanding, in the event of a period of low flow such that Crevice, Dry Canyon, Slough, or Teepee Creeks fall below the critical levels of instream flow shown in Table 10 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow is not subordinate to consumptive use water rights recognized under state law with a priority date on or after January 1, 1993.

TABLE 10

Low Stream Flow Levels at which Subordination is Limited (cfs)

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Teepee Creek
Jan.	3.8	1.1	28.9	6.5
Feb.	4.5	1.0	30.6	6.5
Mar.	5.2	1.2	35.4	7.7
April	20.2	4.7	106.4	23.7
May	71.8	24.0	376.2	84.6
June	63.8	22.9	425.6	100.1
July	18.7	6.6	138.7	33.2
Aug.	8.1	3.1	55.2	14.9
Sept.	7.0	2.0	44.2	10.9
Oct.	7.1	1.9	46.0	10.8
Nov.	5.2	1.5	39.5	9.1
Dec.	3.9	1.4	34.1	8.1

d. Category 4:

The following streams are designated as Category 4: Soda Butte Creek within the state, and the Gallatin, Madison and Yellowstone Rivers where they flow within or form the boundary to reserved land of YNP within the state.

i. Soda Butte Creek

(1) The United States has a reserved water right for instream flow on Soda Butte Creek in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to: (a) any water rights recognized under state law with a priority date before January 1, 1993; (b) any future consumptive use rights calculated according to Article II, as long as the limit on total current and future consumptive use set forth in Table 11 has not already been reached or exceeded by the rights protected under subsection (1)(a); (c) any use considered non-consumptive as defined by this Compact; and (d) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 11
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Soda Butte Creek

Month	
Jan.	0.3
Feb.	0.3
Mar.	0.2
April	0.1
May	6.2
June	17.5
July	6.4
Aug.	2.4
Sept.	0.8
Oct.	0.7
Nov.	0.5
Dec.	0.3

(2) The provisions of Article III, section G.3.d.i.(1) notwithstanding, in the event of a period of low flow such that Soda Butte Creek falls below the critical levels of instream flow shown in Table 12 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow shall be subordinate only to: (a) any water right for domestic use of 35 gpm or less and to any water right held by an incorporated or unincorporated municipality, recognized under state law with a priority date before January 1, 1993; (b) any use considered non-consumptive as defined by this Compact; and (c) any use of groundwater not included in the calculation of consumptive use according to Article II.

(3) In the event that the Congress of the United States repeals the Wilderness designation assigned to the land over which Republic and Hayden Creeks and two unnamed tributaries to Soda Butte Creek flow in Wyoming, or otherwise makes water from such tributaries available for appropriation in Wyoming, the state may seek modification of Article III, section G.3.d.i.(2). of this Compact as provided in Article VI, section A.2.

TABLE 12
Low Stream Flow Levels at which Subordination is Limited (cfs)
Soda Butte Creek

Month	Flow
Jan.	5.4
Feb.	5.1
Mar.	4.0
April	1.7
May	116.9
June	332.5
July	120.7
Aug.	46.4
Sept.	15.3

Oct.	14.2
Nov.	9.3
Dec.	6.3

ii. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 13 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 13
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of these Rivers

Month	Gallatin River	Madison River	Yellowstone River
Jan.	3.1	19.9	41.2
Feb.	3.1	19.7	40.6
Mar.	3.5	20.0	44.5
April	9.8	24.3	73.7
May	39.3	40.9	284.7
June	48.0	40.2	556.7
July	15.7	24.7	335.0
Aug.	5.8	21.4	156.5
Sept.	4.4	21.1	96.0
Oct.	4.6	21.4	75.0
Nov.	4.2	21.0	58.4
Dec.	3.8	20.4	47.2

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

H. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Park reservations. The United States, may as part of its reserved water right, divert water for fire suppression at all of the National Park Service Units as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for instream flow.

ARTICLE IV
YELLOWSTONE CONTROLLED GROUNDWATER AREA

A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

The parties understand that knowledge of the interrelationship of hydrothermal features within YNP, the hydrothermal system that supports those features, and groundwater in surrounding areas of Montana will benefit from increased study. The parties agree that the hydrothermal features of YNP are a unique and irreplaceable resource and represent one of the few undisturbed hydrothermal systems in the United States.

This Compact does not recognize a reserved water right to groundwater outside the boundaries of the reserved land of YNP. However, the parties agree that restrictions shall be placed on the development of groundwater adjacent to YNP to the extent necessary to prevent adverse effect on the reserved water right to groundwater within YNP. The parties agree that the goal of establishment and administration of the Yellowstone Controlled Groundwater Area shall be to allow no impact to the hydrothermal system within the reserved land of YNP.

B. Findings

Ratification of this Compact by the Montana legislature constitutes a finding that:

1. unrestricted use of groundwater adjacent to Yellowstone National Park is likely to interfere with the water rights reserved by the United States in 1872, 1929, 1930, and 1932, for the preservation of hydrothermal features within YNP;

2. prevention of adverse effect on the United States' reserved water right to groundwater within the reserved land of YNP is a benefit to the state and to the United States;

3. the public interest and welfare requires that a corrective control be adopted to regulate groundwater development adjacent to YNP; and

4. the cooperative state-federal management and oversight established by this Article is an effective means to achieve protection of the reserved water right to groundwater necessary to preserve the hydrothermal system within the reserved land of YNP.

C. General Provisions

1. Establishment: The Yellowstone Controlled Groundwater Area or "Area" is hereby established and shall be defined and administered according to this Compact.

2. Funding: The United States agrees that it receives substantial benefit from the establishment and administration of the Yellowstone Controlled Groundwater Area, and that the national and international public benefit extends far beyond the boundaries of the state. Thus, the United States agrees that the relatively small population of the state should not bear the entire cost of protection of the United States' reserved water right. To this end, the Department of the Interior agrees, subject to appropriations by Congress, to reimburse the state for the expense of establishment, administration and enforcement of the Yellowstone Controlled Groundwater Area by the Department; to fund the inventory, sampling, reporting and database management by the Bureau; and, except as provided in Article IV, section J.1.c., to fund the administrative costs and the cost of any study or any other necessary activity pursuant to this Article by the Technical Oversight Committee.

3. Implementation Contingent on Funds: Such funding shall be accomplished pursuant to the terms and conditions of a separate agreement which shall incorporate terms and conditions necessary to specify the activities to be funded and appropriate cost and accounting principles consistent with generally applicable guidelines for federal funding in similar circumstances, and consistent with the terms of this Compact, including, but not limited to, the enumeration of state expenses to be reimbursed in Article IV, section C.2. The state is relieved of its obligation to establish, administer, inventory, sample and maintain a database on the Controlled Groundwater Area in the absence of a funding agreement and the provision of the funds specified therein. If the state is relieved of its obligation to implement all or a portion of this Article, all other terms of this Compact shall remain in effect, including all reserved water rights established herein. Such agreement may be amended, extended, renewed or terminated pursuant to its terms.

4. Interim Measures:

The state agrees that the following interim measures shall apply from the effective date of this Compact until the receipt of funds from the United States or December 31, 1995, whichever occurs first. The United States agrees to reimburse the state for the cost of the interim measures, subject to the appropriation of funds by Congress. The parties agree that, even if funding is not received by December 31, 1995 and interim measures are suspended, the state and the Department of the Interior will continue to recommend federal funding.

a. The Department shall issue the notice required by Article IV, section F.

b. All permits issued within this time period within the Area shall be conditioned on appropriation of water of less than 60° F., measured at the wellhead.

c. The Department shall require that each applicant for a permit or person filing a notice of completion for issuance of a certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

d. The Department shall not issue a certificate of water right for the appropriation of groundwater with a temperature of 60° F. or more within the Area during this time period. The Department shall order temporary abandonment of any well in the Area for which a conditional permit was issued or notice of completion for issuance of a certificate of water right was filed within this time period that produces groundwater with a temperature of 60° F. or more, measured at the wellhead. Temporary abandonment shall be according to the rules of the Montana Board of Water Well Contractors.

e. Following receipt of funds from the United States, the Department shall notify the applicant that the appropriation is subject to the terms of this Compact and shall proceed according to the procedures set forth in this Article. If funds are not received by December 31, 1995, the Department may remove the order of temporary abandonment and remove the condition on the permit or issue the certificate of water right pursuant to state law. The Department shall continue to require that each applicant for a permit or certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

5. Additional Studies: In addition to appropriations necessary to implement this Article, the state and the National Park Service agree to recommend federal funding for a baseline study of hydrothermal features in YNP and within the Controlled Groundwater Area, for continued monitoring of these features, and for geologic and geophysical studies including, but not limited to, geologic mapping, and monitoring of microearthquakes and subsidence in and adjacent to YNP. Implementation of this Article is not contingent on such appropriation.

6. Access for Studies: Consistent with the purposes of YNP, the United States agrees to allow reasonable access to and across YNP to the extent necessary to accomplish the data collection authorized by this Article or additional studies recommended pursuant to Article IV, section C.5. In seeking access, the Department or Bureau shall comply with the provisions of Article II, section I.3.

7. Effect of Modification of Area: It is the intent of the parties that the initial boundaries of the Area set forth in Article IV, section D. and Appendix 3, and initial restrictions set forth in Article IV, section E. may be modified pursuant to Article IV, section J., or with respect to a single appropriation pursuant to Article IV, section G.2.c. and shall not be deemed to be a

modification of this Compact. Any other modification of this Article shall be considered a modification of this Compact and is subject to the terms of Article VI, section A.2.

8. It is the intention of the Department of the Interior to protect the hydrothermal resources of Yellowstone National Park through the system established by Article IV.

a. The National Park Service agrees, consistent with 43 U.S.C. §666, that enforcement will not be sought against the holder of a water right recognized under state law with a priority date on or after January 1, 1993, unless the NPS has, in the first instance, sought enforcement through the state under the terms of this Compact.

b. Notwithstanding the preceding subparagraph, if the National Park Service, in its judgment, determines that circumstances warrant, nothing in this Compact prohibits the United States from petitioning a state or federal court of competent jurisdiction for injunctive or declarative relief. Nothing in this Compact shall alter the courts' application of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.

c. As to an action against the holder of a right to withdraw groundwater recognized under state law with a priority date before January 1, 1993, the United States agrees that this Compact shall not be used or relied upon as evidence to show that: (1) a reserved water right of the United States exists appurtenant to any land other than the reserved land of YNP; or (2) the priority date associated with any portion of reserved land of YNP is other than the date on which that portion of land was actually reserved.

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

The initial boundaries of the Yellowstone Controlled Groundwater Area and Subareas are defined to include the area in the State of Montana located within the geographic boundaries shown on Appendix 3. Appendix 3 is hereby incorporated in this Compact by this reference as though set forth here in full.

1. Subarea I:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea I shall include all of the area in Montana North and West of YNP within the boundary delineated as subarea I on Appendix 3.

2. Subarea II:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea II shall include all the area in Montana North and West of YNP within the boundary delineated as subarea II on Appendix 3.

E. Initial Restrictions on Groundwater Development within the Yellowstone Controlled Groundwater Area

Until the initial boundaries or restrictions set forth in this Article are modified pursuant to Article IV, section J., the restrictions set forth in this section shall apply to groundwater appropriations within the Area with a priority date on or after January 1, 1993. Such appropriations shall follow the procedural requirements of Article IV, section G.

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article applicable to such appropriations shall be those providing for inventory and sampling of current use set forth in Article IV, section H. Groundwater appropriations with a priority date before January 1, 1993 are subject to applicable state law including, but not limited to, issuance of a certificate of water right following final adjudication of existing water rights. Nothing herein waives the right of the United States to seek protection of its reserved water right for protection of the hydrothermal features within the reserved land of YNP from groundwater appropriations with a priority date before January 1, 1993 in a state or federal court of competent jurisdiction, provided that the limitation on use of this Compact in an action by the United States against any such appropriator set forth in Article IV, section C.8.c. shall apply.

2. The Department shall not issue a permit to appropriate groundwater that is hydrothermal discharge water as defined by this Compact unless either: (1) modification occurs pursuant to Article IV, section J. altering pertinent boundaries or restrictions; or (2) an application is approved pursuant to Article IV, section G.2.c. Unless modification occurs pursuant to Article IV, section J., the Department shall not limit an appropriation of groundwater that is not hydrothermal discharge water unless required to do so by Article II and III of this Compact or any other provision of state law.

F. General Notice of Establishment of the Yellowstone Controlled Groundwater Area

1. Notice: Within 120 days after the effective date of this Compact and within 60 days of any decision by the Department to modify the Area as set forth in Article IV, section J., the Department shall publish a notice of establishment or modification of the Area setting forth:

a. the description by legal subdivisions of all lands included in the controlled groundwater area;

b. the purpose of the controlled groundwater area or modification; and

c. the permit requirements, restrictions, inventory, sampling and monitoring applicable within each subarea.

2. Publication and Service: Such notice shall be published in a newspaper of general circulation in the county or counties in which the Area is located. The Department shall also serve a copy of the notice by mail on each well driller licensed in Montana whose address is within any county in which any part of the Area is located; on each well driller known by the Department to operate in the Area; on the Montana State Bureau of Mines and Geology; on the mayor or chair of the governing body of each county or incorporated municipality located in whole or in part within the Area; and on the United States. The Department may also serve notice on any other person or state or federal agency that the Department believes may be interested in or affected by the proposed designation or modification of the Area. A copy of the notice shall be mailed to each person's last known address according to the records of the Department.

G. Appropriations of Groundwater within the Yellowstone Controlled Groundwater Area With a Priority Date on or After January 1, 1993

1. Appropriation of Groundwater within the Area with a Priority Date on or after January 1, 1993 and before the Effective Date of this Compact:

The initial restrictions on groundwater development set forth in Article IV, section E. apply to appropriations of groundwater with a priority date on or after January 1, 1993 and before the effective date of this Compact provided that the following procedural requirements are met:

a. Within 120 days after the effective date of this Compact or the receipt of adequate funds from Congress, whichever occurs later, the Department shall provide the United States with notice of all groundwater appropriations within the Area that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

b. Subsequent to the notice provided for in Article IV, section G.1.a. and up to 120 days following mailing of the report on inventory provided in Article IV, section H.1.b.iii., the United States may provide the Department with credible information on any groundwater appropriation within the Area with a priority date on or after January 1, 1993 and before the effective date of this Compact, showing that the appropriation is of water with a temperature of 60° F. or more.

c. If the United States provides the information set forth in Article IV, section G.1.b., the Department shall, within 60 days of receipt of the information, issue an order requiring that the appropriator comply with the applicable restrictions. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order.

d. If the appropriator enters an appearance to contest the order, the Department shall: (1) issue an order staying use of the appropriation pending final decision on the matter by the Department; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated, provided that in such a proceeding the United States has the burden of proving by a preponderance of the evidence that the appropriation is of groundwater of 60° F or more. If the United States meets this burden, the appropriator shall comply with procedures and restrictions set forth in Article IV, section G.2.

2. Appropriations of Groundwater with a Priority Date after the Effective Date of this Compact

a. General Provisions

i. All groundwater appropriations within the Area after the effective date of this Compact are subject to this Article. Applications and registration for a permit for the appropriation of groundwater within the Area after the effective date of this Compact shall include a statement of whether the proposed use requires water with temperature of 60° F. or more. In addition, the Department shall not issue a permit for appropriation of groundwater unless the requirements of Articles II and III are met, if applicable.

ii. A permit issued pursuant to this Article shall provide that:

(1) The permittee shall install a device to meter total volume of water use in compliance with rules promulgated by the Department pursuant to Article IV, section I.5. The Department shall specify the metering method and location

of installation. On or before January 15 of each year, the permittee shall report annual use to the Bureau at: Montana Bureau of Mines and Geology, Main Hall, Montana Tech, Butte MT, 59701. Meters shall be made available to the permittee at the Department of Natural Resources and Conservation Regional Water Rights Office at: 111 North Tracy, Bozeman, Montana, 59715. Meters shall be acquired for distribution by the Department of Natural Resources and Conservation Regional Water Rights Office as part of the inventory and sampling program authorized by Article IV, section I.

(2) The Department has the authority to modify or revoke a permit if the provisions listed below are applicable, and all other administrative or judicial enforcement authority provided under Title 85, part 2, of the Montana Code Annotated applies to this part. The Department may exercise its enforcement authority if (1) the appropriator fails to allow access for sampling provided for in Article IV, section H.; (2) the character of the groundwater produced changes such that a restriction applies pursuant to this Article; (3) new restrictions imposed pursuant to Article IV, section J. are applicable; or (4) the appropriator violates any other provision of this part.

(3) A permit to appropriate hydrothermal discharge water may include limits and conditions on appropriation including but not limited to (a) limits on total withdrawal by day, month or year; (b) a requirement to adhere to a system of rotation of use within the Area; and (c) a provision adjusting the total withdrawal from two or more wells in the area used by the same appropriator.

(4) A permit to appropriate hydrothermal discharge water shall include any applicable monitoring requirement recommended by the Working Group Report or recommendations by the TOC superseding that report unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate.

iii. If, subsequent to the effective date of this Compact, modification pursuant to Article IV, section J. removes the restrictions set forth in Article IV, section E., the monitoring recommended by the Working Group Report or as superseded by the TOC shall continue to apply unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate, according to the criteria in the Working Group Report or as superseded by the TOC.

b. Appropriations of Groundwater with a Temperature of less than 60° F

i. Registration and Application

(1) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the Department that shall include, but not be limited to, a statement of whether the proposed use requires water with temperature of 60° F. or more, the well location, and intended use and shall comply with the provisions of Article II and III, if applicable. The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing.

(2) An applicant for a permit to appropriate groundwater of greater than 35 gpm or 10 acre-feet per year after the effective date of this Compact, shall comply with existing state law for permits to appropriate water and the limits on groundwater appropriations set forth in Articles II and III, if applicable. The Department may issue an interim permit for the proposed appropriation to an

applicant seeking an appropriation for a use that does not require water with a temperature of 60° F. or more if the requirements of this section are met.

ii. Drilling

(1) On filing a proper registration form, an applicant for an appropriation of 35 gpm or less, not to exceed 10 acre-feet per year, with a proposed use that does not require water with a temperature of 60° F. or more may complete the proposed well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

(2) Upon issuance of an interim permit, an applicant for an appropriation of greater than 35 gpm or 10 acre-feet per year may drill the well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

iii. Within 60 days of drilling of the well, the applicant or registrant shall provide the Department with a well log on a form provided by the Department. The well log shall include well location to the quarter-quarter-quarter-quarter section; ground elevation at the wellhead; well depth; water level; flow rate or maximum pump rate; water temperature measured at the wellhead; and specific conductance of the water produced using a device provided by the Water Resources Regional Office.

iv. The Department shall forward a copy of the well log to the United States and to the Bureau on receipt.

v. Following receipt of the well log, the Department may inspect the well at a reasonable hour of the day to verify the information on the well log report. The United States may request to accompany the inspector as set forth in Article II, section I.4.

vi. The United States has 60 days from the mailing of the report to file an objection setting forth credible information that the appropriation is of groundwater with characteristics to which restrictions established pursuant to this Article apply.

vii. The Department may issue a permit to appropriate if: (1) the well log and any verification confirm that the appropriation is of water to which no restrictions pursuant to this Article apply; and (2) all other requirements of state law and this Compact have been met, unless the United States files an objection pursuant to Article IV, section G.2.b.vi. If the well log or verification indicate appropriation of water to which restrictions pursuant to this Article apply or if the United States files a proper objection, the applicant shall be subject to the provisions of Article IV, section G.2.c.

viii. If a permit is issued, the applicant or registrant may complete the appropriation and apply the water to beneficial use.

ix. Within 60 days of completion of the appropriation, the permittee shall file a notice of completion with the Department pursuant to state law.

c. Appropriation of Groundwater with a Temperature of 60° F. or Greater

If an application or registration for a permit within the Area is for a use requiring groundwater with a temperature of 60° F. or more or the well log or any verification indicates water of 60° F. or more, the following provisions apply:

i. Subarea I - groundwater with a temperature of 85° F. or more:

Groundwater of 85° F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate water with a temperature of 85° F. or more in Subarea I, unless the appropriation is consistent with modification of restrictions pursuant to Article IV, section J., or pursuant to the procedures set forth below. An application for an appropriation that proposes to do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact is not subject to these restrictions.

(1) The application shall set forth credible information that the proposed appropriation does not include contribution by hydrothermal discharge water;

(2) Within 30 days of receipt of the information the Department shall seek review of the application by the TOC.

(3) The TOC shall review the report to determine if the appropriation can take place without adverse effect on the hydrothermal system within YNP. In performing the review, the TOC shall utilize the best available scientific information. The TOC shall resolve doubt in favor of protection of the hydrothermal system within YNP.

(4) Within 60 days of the request by the Department, the TOC shall recommend, in a report to the Department, if, and under what conditions the appropriation could be allowed without adverse effect on the hydrothermal system within YNP. The TOC may recommend limits or conditions on the proposed appropriation that, in the opinion of the TOC, would allow the development while protecting the hydrothermal system within YNP. The TOC shall also provide the Department with a dissenting report pursuant to Article IV, section J.1., if applicable.

(5) On receipt of the report or reports, the Department shall provide a copy to the United States and the applicant and shall schedule a hearing no less than 60 and no more than 90 days from mailing of the report.

(6) The hearing shall proceed as a contested case under the Montana Administrative Procedure Act, Title 2, Chapter 4 of the Montana Code Annotated.

(7) The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case.

(8) The report and recommendations provided by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The dissenting report, if any, may be used as rebuttal evidence.

(9) If the report recommends denial of the application, the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows

the appropriation or until the department determines that the well should be permanently abandoned.

(11) Within 30 days of an order by the Department pursuant to this section, appeal on the record may be made to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ii. Subarea I - groundwater with a temperature of 60° F. or more, but less than 85° F:

Appropriation of groundwater with a temperature of 60° F. or more, but less than 85° F. in subarea I is subject to the following provisions.

(1) The applicant shall provide credible information that the water meets the following criteria:

(a) the proposed appropriation will do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact, or

(b) the proposed appropriation meets all of the following criteria:

(i) The water temperature is the result of the normal thermal gradient of the earth plus the mean annual air temperature at the site plus 14° F. Unless modified by the TOC, the Department shall use the following equation to estimate the water temperature expected:

(0.01646 x the depth of the production zone in feet) + 59.3° F.

If the temperature measured at the wellhead is equal to or less than the temperature estimated by this equation, the appropriation meets this criteria.

(ii) the concentration of soluble chloride is less than ten parts per million; and

(iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of Mines and Geology, Special Publication 54, March 1971.

(2) The Department may issue a permit to appropriate groundwater with a temperature of 60° F or more, but less than 85° F. to an applicant that meets the above criteria and is in compliance with the provisions of Article IV, section G.2.c. unless (a) restrictions are consistent with modification pursuant to Article IV, section J.; or (b) the United States objects and shows by a preponderance of the evidence that the criteria have not been met or, for another scientific reason, the temperature is the result of contribution by hydrothermal discharge water.

(3) If the applicant fails to meet the above criteria or the United States meets its burden, the applicant shall comply with the provisions of Article IV, section G.2.c.i. for water or 85° F or more.

(4) The three criteria set forth in Article IV, section G.2.c.ii.(1)(b) may be modified on recommendation by the TOC.

iii. Subarea II:

(1) Groundwater of 85° F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of

Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

(2) An applicant who encounters groundwater of 60° F. or more but less than 85° F. shall comply with the provisions of Article IV, section G.2.c.ii., provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

3. Change in Character of Groundwater: Within 60 days of the receipt of information indicating a change in the character of the groundwater appropriated under a permit issued in the Area on or after January 1, 1993 that indicates the production of groundwater for which a restriction applies, the Department shall issue an order requiring that the appropriator comply with the limitations on appropriation of hydrothermal groundwater authorized in this Article. The order shall take affect 60 days following the date issued unless the appropriator appears to contest the order. If the appropriator appears to contest the order, the Department shall set a date for a hearing and proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, title 2, Chapter 4, of the Montana Code Annotated, provided that the appropriator shall have the burden to prove by a preponderance of the evidence that the water produced does not meet the criteria to which restrictions apply.

H. Inventory and Sampling of Groundwater

1. Initial Inventory

All groundwater appropriations in the Area with a priority date before the effective date of this Compact shall be inventoried as set forth below:

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever occurs later, the Department shall serve notice by mail on each person or public agency known from an examination of the records in the Department's office to be an appropriator of groundwater with a priority date before the effective date of this Compact. The notice shall set forth:

i. the contents of the notice required in Article IV, section F.; and

ii. a statement that within 3 years from the date of notice the Bureau may visit the wellsite to measure temperature; flow rate or maximum pump capacity; water level, or pump level if the well cannot be entered; and may collect a water sample for additional analysis.

b. Inventory

i. Within 3 years of notice pursuant to Article IV, section H.1.a., a representative of the Bureau shall inventory each well drilled pursuant to an appropriation recognized under state law with a priority date before the effective date of this Compact. The inventory shall be considered complete when the Bureau has inventoried substantially all of the wells that can be located and accessed with reasonable diligence. The inventory shall include, but not be limited to, the following:

(1) well location to the quarter-quarter-quarter-quarter section;

(2) ground elevation at the wellhead;

(3) flow rate or maximum pump capacity;

(4) water level, or pump level if the well cannot be entered;

(5) water temperature at the wellhead;

(6) specific conductance of the water at the wellhead;

(7) chloride content of the water at the wellhead;

(8) water samples from a representative number of wells selected by the Bureau. The water samples shall be analyzed by the Bureau, or by a qualified lab contracted by the Bureau. Samples shall be analyzed for chemistry, and, if applicable, gas and isotopes. Choice of analyses shall be at the discretion of the Bureau using the Working Group Report or a report by the TOC superseding the Working Group Report as a guideline. The Bureau may consult with the TOC concerning well selection and analysis; and,

(9) any additional information deemed necessary for implementation of this Article by the Bureau in consultation with the TOC.

ii. The inventory shall be prioritized to complete Subarea I first.

iii. Within 6 months of completion of the inventory in each Subarea, the Bureau shall provide a report to the Department, the TOC, and the United States, verifying that the inventory is complete and setting forth the data obtained in the inventory. The report shall be made available to the public by the Department. In addition, the Bureau shall maintain an adequate database pursuant to Article IV, section H.2.

2. Sampling Program and Database

a. Following the initial inventory of all current groundwater appropriations in the Area provided for in Article VI, section H.1., the Bureau shall sample wells selected in consultation with the TOC and at a frequency determined in consultation with the TOC. The wells may include appropriations made prior to, on or after January 1, 1993. The number of wells sampled and the analyses performed shall be as determined by the Bureau in consultation with the TOC. Until superseded due to recommendation by the TOC, the Working Group Report shall be used as a guideline in making this determination. Within 6 months of the completion of each inventory and sampling program, the Bureau shall provide the Department, the TOC and the United States with a report on the results.

b. The Bureau shall maintain an adequate database on the Yellowstone Controlled Groundwater Area which shall include, at a minimum, analyses of water chemistry, temperature, well depth, well capacity and well location.

c. The United States agrees to provide an annual report to the Bureau for incorporation into the database on the water chemistry, temperature and flow rate of any well in use or spring sampled in the portion of YNP within the state, and may include such information for any well or spring in the portion of YNP outside the state.

d. The information in the database shall be available to the public through the Natural Resources Information System, currently located at 1515 E. Sixth Avenue, Helena, Montana 59620-1800.

I. Administration of the Yellowstone Controlled Groundwater Area

1. The Yellowstone Controlled Groundwater Area established by this Compact shall be administered pursuant to applicable state law and the terms of this Compact.

2. In addition to the requirements imposed by state law, the Department shall provide the United States with notice of any application or registration for a permit to appropriate groundwater within the Area in the same manner and time as required by state law for notice to groundwater appropriators in a controlled groundwater area.

3. The United States may be an objector to any application or registration for a permit to appropriate groundwater or in a hearing for modification of a permit to appropriate groundwater within the Area pursuant to the provisions of Article IV, section G.

4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.

5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto. In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

J. Modification of the Yellowstone Controlled Groundwater Area

1. Technical Oversight Committee: Establishment and Authority

a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60° F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.

b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:

(i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and

(ii) A judge of the First Judicial District in Helena shall fill the vacancy by selecting a member from each set of nominations.

c. Each member shall serve a five-year term and shall be eligible for reappointment. Expenses of the members shall be born by the entity appointing the member. The per diem or salary, and travel expenses of the three members-at-large shall be born equally by the United States and the state, subject to the availability of funds. All other expenses of the TOC shall be born by the United States subject to Congressional appropriation as set forth in Article IV, section C.

d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to Article IV, section J; (2) review of an application to appropriate groundwater with a temperature of 60° F. or more; and (3) removal of any of the criteria specified in Article IV, section G.[2.]c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

e. The TOC shall:

i. review the boundaries of the Area and the Subareas;

ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;

iii. assess the cumulative impact of all development in the Area;

iv. review changes in the groundwater and hydrothermal systems revealed by inventory and analyses done by the Bureau, and any other pertinent scientific evidence;

v. review new scientific evidence pertinent to the Area;

vi. consult with the Bureau or the Department on request;

vii. present evidence and make recommendations to the Department in accordance with Article IV, section J.2.

viii. review applications for a permit to appropriate groundwater on request by the Department as set forth in Article IV, section G.2.c.; and

ix. take any additional action necessary to implement this Article.

f. The Department and the Bureau shall provide the TOC with all information in their records regarding appropriations of groundwater within the Area including reports required by this Article.

g. The initial review shall take place within 1 year of the receipt of the inventory report done by the Bureau pursuant to Article IV, section H. Subsequent reviews shall take place every 5 years following the initial inventory or following the issuance of 75 permits to appropriate water within the Area by the Department, whichever occurs first. Additional review shall also take place on request by the United States or the state.

h. Within 6 months of initiation of a review, the TOC shall provide a report of the review, including any recommendation for modification, and a dissenting report, if any, to the Department and the United States. Recommendations shall be based on a determination by a supermajority of the entire TOC that the modification is necessary to prevent adverse effect to the hydrothermal system within the reserved land of YNP, or that modification may be made without the threat of adverse effect on the hydrothermal system within the reserved land of YNP. The recommendation shall be made in good faith and based on scientific evidence including, but not limited to, the following:

i. in the case of extension of boundaries, the criteria set out in the Working Group Report for designation of the boundary of the Area to be enlarged is found to exist within the proposed extension;

ii. the cumulative effect of groundwater development within the Area or a portion of the Area has resulted in declining hydraulic head and modification of boundaries or restrictions are necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iii. changes in groundwater revealed by the inventory and sampling program are such that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iv. scientific evidence indicates that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

v. based on scientific evidence, restrictions can be removed or boundary modifications made without the threat of adverse effect to the hydrothermal system within the reserved land of YNP.

2. Modification Pursuant to Review

a. Within 60 days of mailing of the report in Article IV, section J.1.h., and if (1) the TOC recommends modification; (2) the United States, state or a person with property or water rights within the Area petitions for a hearing; or (3) a person with an interest that would be adversely affected by the recommendation, petitions for a hearing, the Department shall provide for notice of a hearing pursuant to state law.

b. The Department shall follow the rules for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated. In addition, the Department shall apply the following provisions:

i. The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case. The hearing officer shall also hear any oral and written scientific evidence presented by the state, the United States, any applicant for a permit to appropriate who has requested review, and any person with property or water rights in the Area, or an interest that would be adversely affected by the recommended modification.

ii. The scientific evidence and recommendations presented in the report by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The Department shall adopt the recommendations of the TOC unless the recommendation by the TOC is refuted by clear and convincing scientific evidence. The dissenting report of the TOC, if any, may be used as rebuttal evidence.

iii. The Department shall issue an order stating findings of fact and conclusions of law.

c. Within 30 days of an order by the Department, a person aggrieved by the order may appeal on the record to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ARTICLE V
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water [with respect to BHNB, GNP, and YNP or] the nature or extent of the rights to water or the right to administer water [with respect to BCNRA and LBBNM] of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member. The relationship between the water rights of the National Park Service described herein and any rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member shall be determined by the rule of priority. The United States specifically recognizes the seniority of the Crow Tribal Water Rights.

2. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the National Park Service. The exercise of a water right of the United States, if any, to water for a consumptive use on land administered by the United States Forest Service upstream of a water right to instream flow described in this Compact shall be allocated from the United States' share for instream flow, not the state's share for consumptive use.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the National Park Service, and does not affect the water rights of any other federal agency.

10. to alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

D. Use of Water Right

Except as otherwise provided in this Compact, the rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land.

E. Appropriation Pursuant to State Law

Nothing in this Compact may prevent the United States from seeking a permit to appropriate water under state law for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that, no such use may be included in the calculation of total current or future consumptive use rights allocated to use pursuant to state law by this Compact, and provided further that, a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to general provisions of state law as provided in Article II, section J.2.b.

F. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

G. Severability

Except as provided in Article IV, the provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3) MCA, the water rights described in this Compact for the LBBNM and BCNRA Units shall be considered as separate Compacts.

H. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE VI
FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Except as provided in Article IV concerning the appropriation of funds, attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. §666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 4 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.) and any claims made by the United States for LBBNM or BCNRA in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections D. and F. in the Compact for YNP, GNP, and BHNM, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

Specifically excepted from this final settlement of water rights are water rights Claims No. 43P-W-162354-00 and 43P-W-162348-00, both of which are claimed in the general adjudication of water rights as state law based water rights. Claim No. 43P-W-162354-00 is for 0.75 cfs from the Big Horn Canal for irrigation purposes at the Bighorn River Ranch site within BCNRA. Claim No. 43P-W-162348-00 is for 50 gpm from Pete's Spring for recreation and wildlife purposes and is located outside of the BCNRA boundary.

D. The parties agree to seek enactment of legislation and to recommend appropriation of federal funds necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____________, 19__.

FOR THE STATE OF MONTANA
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
FOR THE UNITED STATES

History: En. Sec. 1, Ch. 635, L. 1993; Sec. 85-2-706, MCA 1993; redes. 85-20-401 by Code Commissioner, 1994; amd. Sec. 1, Ch. 149, L. 1995.

85-20-402. Statutory appropriation of federal funds. (1) There must be created those accounts that are necessary within the federal special revenue fund established under 17-2-102 for the purposes of this part.

(2) Federal funds deposited in the accounts and interest and earnings on the accounts are statutorily appropriated, as provided in 17-7-502, and must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

(a) establishment, administration, and enforcement of the Yellowstone controlled ground water area;

(b) inventory, sampling, reporting, and data base management;

(c) provision for administrative costs and the cost of any study or any other necessary activity by the technical oversight committee; and

(d) any other necessary activity pursuant to this part.

History: En. Sec. 2, Ch. 635, L. 1993; Sec. 85-2-707, MCA 1993; redes. 85-20-402 by Code Commissioner, 1994.

Part 5

United States Bureau of Land Management — Montana Compact

Part Compiler's Comments

Ratification Date: This compact was ratified upon filing with the Secretary of State on March 28, 1997.

85-20-501. United States Bureau of Land Management-Montana compact ratified. The compact entered into by the state of Montana and the United States Bureau of Land Management and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on March 28, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, BUREAU OF LAND MANAGEMENT

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the Bureau of Land Management within the State of Montana at the time of the effective date of this Compact.

RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of two Bureau of Land Management units in the State of Montana, specifically those reserved water rights necessary to preserve the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Annual Report" means the report prepared by the Montana Department of Natural Resources and Conservation providing information concerning water appropriations issued, modified, revoked, or abandoned in that year that affects the quantity of water in the Available Water Supply, and the current status of the Available Water Supply.

(2) "Available Water Supply" or "AWS" means those monthly amounts of surface and groundwater available to meet the state's projected demands, as identified in Table 1, in the Missouri River basin upstream from the point the

Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River beyond that necessary to satisfy the United States' reserved water right. All depletions from appropriations completed after December 31, 1987, shall be subtracted from the Available Water Supply.

(3) "Bear Trap Canyon Public Recreation Site" or "BTCPRS" means those lands located in Montana that, pursuant to authority granted by Executive Order No. 10355 of May 26, 1952, were withdrawn and reserved by Secretary of the Interior Public Land Order 5062 (Montana 17093), published in the Federal Register on June 9, 1971.

(4) "BLM" means the United States Bureau of Land Management or its successor.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Depletion" means, for water uses subtracted from the Available Water Supply, the amount of water reduced in the source of supply for each month as calculated in accordance with the Method for Calculation of Monthly Depletions. A depletion is a standard reduction amount based on depletion factors for the type of use as opposed to a measured deduction or a term, condition, restriction, or limitation on an appropriation.

(7) "Groundwater" means any water that is beneath the ground surface.

(8) "HYDROSS Model" means the United States Bureau of Reclamation's Hydrologic Operations Study (HYDROSS) model for the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River. The HYDROSS Model is a water supply model that uses monthly water supply studies derived from a period of flow records to simulate the effect of existing and proposed water demands on the historic naturalized flow of the Missouri River. The HYDROSS model and information used to develop the model are archived in the Montana state library.

(9) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the federal reservation.

(10) "Method for Calculation of Monthly Depletions" means the procedure the Department will follow in calculating depletions subtracted from the Available Water Supply for appropriations completed after December 31, 1987. The Method for Calculation of Monthly Depletions is incorporated in this Compact and attached as Appendix 1.

(11) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(12) "Parties" means the State of Montana and the United States.

(13) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(14) "Supplemental Water" means a new appropriation issued for the same purpose of use and place of use already covered by a valid appropriation, with the same (or reduced) period of use, flow rate and, if applicable, volume of water.

To be considered supplemental, no aspect of the new appropriation may exceed that of the original valid appropriation and only one appropriation or part of each may be used at the same time.

(15) "Upper Missouri National Wild & Scenic River" or "UMNW&SR" means the segment of the Missouri River located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq, (1986, Supp. 1992), was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, Title II, 90 Stat. 2327-2329, on October 12, 1976.

(16) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

ARTICLE II
WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this Compact recognize that the water rights described in this Compact are junior to any Tribal water rights with a priority date before the effective date of this Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article V, section A.

A. Instream Flow for the Upper Missouri National Wild and Scenic River.

1. Priority Date: The United States has a priority date of October 12, 1976, for the water right described in this Compact for the UMNW&SR.

2. Instream Flow: The United States has a water right for instream flow in the Missouri River from Fort Benton one hundred and forty-nine miles downstream to Fred Robinson Bridge, as specifically depicted on the map attached as Appendix 2. The water right is in the amount of the remaining flow of the river after (1) all water appropriations completed before December 31, 1987; (2) the volumes of water designated for the Available Water Supply as provided in Article III, section A; and (3) uses not subtracted from the Available Water Supply as provided in Article III, section C.

B. Instream Flow for the Bear Trap Canyon Public Recreation Site.

1. Priority Date: The United States has a priority date of June 9, 1971, for the water right described in this Compact for the BTCPRS.

2. Instream Flow: The United States has a water right for instream flow in the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site, more specifically described as T4S R1E Sec. 20 SW1/4 downstream to T3S R1E Sec. 15 NE1/4. The water right is in the amount of 1,100 cubic feet per second from January 1 through December 31.

ARTICLE III
UMNW&SR WATER RIGHT IMPLEMENTATION

A. Available Water Supply.

The HYDROSS model incorporates information on water uses completed on or before December 31, 1987. The Department will calculate depletions from appropriations completed after December 31, 1987, on a monthly basis in accordance with Article III, section B and subtract such depletions from the water volumes designated for the Available Water Supply as set forth in Table 1.

TABLE 1
AVAILABLE WATER SUPPLY
MONTHLY AMOUNTS

Month	Acre-feet
January	104,000
February	121,000
March	124,000
April	185,000
May	219,000
June	62,000
July	82,000
August	66,000
September	40,000
October	35,000
November	57,000
December	98,000

B. Method for Calculation of Monthly Depletions Subtracted from the Available Water Supply.

1. Surface Water. Except as provided in Article III, section C, the Department will calculate depletions from surface water based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 in the month that the use occurs. The Department will subtract monthly depletions from the AWS monthly amounts.

2. Groundwater. Except as provided in Article III, section C, the Department will calculate depletions from groundwater based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

3. Stored Water. Except as provided in Article III, section C, the Department will calculate depletions from stored water based on monthly depletion factors for various types of water use for the months of use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1, but subtract such depletions from the AWS in the months when diverted as calculated in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1. The Department will calculate evaporation depletions in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS monthly amounts.

4. Water Reservations. Except as provided in Article III, section C, the Department will calculate depletions from state water reservations granted pursuant to 85-2-316 but not completed on or before December 31, 1987, based

on the monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS monthly amounts, except that the Department will not subtract depletions from Water Reservation No. 72579-41T from the AWS monthly amounts. The Department will process state water reservations subtracted from the AWS monthly amounts that are abandoned, revoked, modified, or found invalid pursuant to Article III, section D.

C. Uses Not Subtracted from the Available Water Supply.

1. Non-Consumptive Use. The Department will not subtract non-consumptive uses from the AWS monthly amounts.

2. Uses of 35 gallons per minute or less, not to exceed 10 acre feet per year. The Department will not subtract groundwater uses of 35 gallons per minute or less, not to exceed 10 acre feet per year, and surface water appropriations of 35 gallons per minute or less, not to exceed 10 acre feet per year for domestic use from the AWS monthly amounts.

3. Supplemental Water. The Department will not subtract supplemental water uses from the AWS monthly amounts.

4. Lawn and Garden. The Department will not subtract depletions for appropriations to irrigate an area 5 acres or less from the AWS monthly amounts.

5. Instream Stock Uses. The Department will not subtract instream stock uses from the AWS monthly amounts.

6. Late Claims. The Department will not subtract valid late claims as defined by 85-2-221, MCA (1995) from the AWS monthly amounts.

7. Federal and Tribal Water Rights. The Department will not subtract water rights created under federal law, water rights recognized in satisfaction of water rights created under federal law, and water rights owned by individuals that are derived from water rights created under federal law from the AWS monthly amounts.

D. Additions to the Available Water Supply.

1. Abandonment. When an appropriation right on a stream affected by this Compact is abandoned after December 31, 1987, and such abandonment causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply. State law governs the issue of whether an abandonment has occurred.

2. Modified, Revoked, or Invalid Appropriations. When an appropriation right on a stream affected by this Compact is modified, revoked, or found invalid and such modification, revocation, or invalidation causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply.

E. Basin Closure. Except for the uses provided for in Article III, section C, in the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the UMNW&SR the Department shall not process or grant an application for an appropriation in any month in which the water volume designated for the Available Water Supply has been exhausted.

F. Prohibition on Future Mainstem Impoundment. No new impoundments may be permitted on the mainstem of the Missouri River upstream from the UMNW&SR. Reclamation, repair, or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that, without the consent of the United States, which for nonfederal power generating impoundments under the Federal Energy Regulatory Commission's jurisdiction shall be obtained through the Federal Energy Regulatory Commission, reclamation, repair, or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment.

G. Administration and Reporting by the State.

1. Department Administration. The Department will administer the AWS by subtracting depletions from the monthly available water amounts following the procedures set forth in the Method for Calculation of Monthly Depletions attached as Appendix 1. In order to monitor the water volumes in the AWS, the Department will calculate preliminary monthly depletions and subtract the amounts from the AWS. The Department will make final subtractions from the AWS when the Department determines that an appropriation is complete pursuant to 85-2-315 or 85-2-316(8)(b), MCA.

2. Annual Report. The Department will produce an Annual Report by March 1st of each year detailing its actions in administering the AWS for the previous calendar year, provided that the first Annual Report after ratification of this Compact shall include information concerning water appropriations issued, completed, modified, revoked, found invalid, or abandoned since January 1, 1988, through the previous calendar year. The Annual Report is final on April 15 of the year issued unless on or before that date the BLM submits written comments or a request for an annual meeting to the Department. If an annual meeting is requested, it shall be held within thirty days of the request. The Department will make a final decision and issue a final Annual Report by June 1, unless the Department and the BLM agree to a different date.

3. Cooperative Review Process. The Department and the BLM will create a cooperative review process to allow discussion of depletion factors and depletion amounts assigned to the undefined uses as listed in the Method for Calculation of Monthly Depletions attached as Appendix 1 and any other issues concerning the Annual Report. Subject to Article III, section H(1), the Department will make the final decision concerning the administration of the AWS. The Department and the BLM will develop a Memorandum of Understanding describing the cooperative review process within six months of the ratification of this Compact.

4. Changes to the Method for Calculation of Monthly Depletions. The parties may make changes to the Method for Calculation of Monthly Depletions attached as Appendix 1 by written agreement and such changes shall not be deemed a modification of this Compact.

H. Action for Enforcement of Provisions of Article III.

The United States may file an action in a court of competent jurisdiction to enforce the provisions of Article III as follows:

1. Enforcement of Administration of Available Water Supply. After the Annual Report becomes final in accordance with Article III, section G(2), the

United States shall have 90 days to file an action for enforcement of the provisions of Article III, section G of this Compact concerning the administration of the AWS. Any action challenging the administration of the AWS may consist only of trial de novo of the Department's actions for the previous calendar year. The United States may not challenge the Department's actions concerning administration of the AWS contained in previous Annual Reports. Except for appropriations issued in violation of Article III, section E, any court order concerning this subsection shall be limited to calculating depletion amounts from the AWS and does not affect the appropriations issued, revoked, modified, or abandoned or any other decision of the Department.

2. Enforcement of Other Provisions of Article III. The United States may file an action for enforcement of any provision of Article III except Article III, section G at any time.

3. No Standing to Object. The United States does not have standing to object to an application for an appropriation or change in appropriation right, or to participate in a revocation or modification proceeding, based on the property, water right, or interests of the United States for the UMNW&SR, provided that, for an appropriation applied for with a point of diversion or means of conveyance within the boundaries of the UMNW&SR, the Department shall not grant the appropriation unless the Department expressly conditions the appropriation on obtaining the necessary authorization for entry and use from the United States, and provided further that nothing in this Compact shall limit the United States' standing to object based on any other water rights of the United States or the reserved water right for the BTCPRS.

4. Exclusive Remedy. The remedy set forth in this section is the exclusive remedy for enforcement of Article III of this Compact. The United States shall not have to exhaust any administrative remedies in order to enforce Article III of this Compact.

ARTICLE IV
BTCPRS WATER RIGHT IMPLEMENTATION

A. Subject to Prior Uses. The United States' federal reserved water right for instream flow for the segment of the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site is subject to all water rights with a priority date before June 9, 1971 recognized under state or federal law. Nothing in this Compact may affect an existing right to divert water from a point within the BTCPRS and transport it for use outside the BTCPRS.

B. Change in Instream Flow Right. The federal reserved water right for instream flow as described in Article II, section B, shall not be changed to any other use.

C. Notice of Reopening of Madison River Basin. The Department shall notify the BLM if an application for a state water reservation pursuant to 85-2-316, MCA, may be processed and granted within the Madison River basin, as such basin is defined by 85-2-340(4).

D. Enforcement of Water Right. The United States may file an action in a court of competent jurisdiction to enforce the federal reserved water right described in Article II, section B.

E. Venue for Appeal of Administrative Decisions. For any appeal of an administrative decision, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, chapter 4, of the Montana Code Annotated.

ARTICLE V
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Bureau of Land Management described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in Montana.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Bureau of Land Management for the UMNW&SR and the BTCPRS.

B. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact, or, except as provided in this Compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the BLM, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

C. Use of Water Right.

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes outlined in applicable federal law.

D. Concurrent with other Non-consumptive Water Uses.

The federal reserved water right for instream flows for the UMNW&SR and the BTCPRS recognized by this Compact shall run concurrently with any other non-consumptive water uses including but not limited to all hydropower uses and other instream flow uses.

E. Appropriation Pursuant to State Law.

Nothing in this Compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the UMNW&SR or the BTCPRS or for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to state law.

F. Reservation of Rights.

The parties expressly reserve all rights not granted, described, or relinquished in this Compact.

G. Severability.

The provisions of this Compact are not severable, provided that for the purposes of 85-2-702(3), MCA, the water rights described in this Compact for the Upper Missouri National Wild and Scenic River and Bear Trap Canyon Public Recreation Site shall be considered as separate Compacts.

H. Multiple Originals.

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice.

Unless otherwise specifically provided for in this Compact, service of notice, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI
FINALITY OF COMPACT

A. Binding Effect.

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States

Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. the state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Any attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

B. Settlement of Claims.

The parties intend that the water rights described in this Compact are in full and final settlement of the reserved water right claims for the UMNW&SR and the BTCPRS. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the UMNW&SR and the BTCPRS relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved water rights for the above mentioned units. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of ______________, 19__.

Appendix 1
Method for Calculation of Monthly Depletions

A. Surface Water.

Depletion factors are grouped by the use codes now employed by the Department, and the monthly depletion factors for each type of water use are set forth below.

1. Fishery, Wildlife, Recreational, and Wildlife/Waterfowl Uses:

FS	Fishery
FW	Fish and Wildlife
RC	Recreation
WW	Wildlife/Waterfowl.

The water loss resulting from fishery, wildlife, recreational, and wildlife/waterfowl uses occurs as evaporation from small ponds. The following table lists the monthly depletion factors for evaporative loss in feet per surface acre:

Monthly Depletion Factors for Evaporation

January	0.00
February	0.00
March	0.00
April	0.08
May	0.17
June	0.26
July	0.50
August	0.51
September	0.35
October	0.26
November	0.04
December	0.00

The Department will calculate monthly depletions from evaporation by multiplying the above factors by maximum reservoir surface area (acres).

2. Geothermal and Power Generation Uses:

GE Geothermal
PG Power Generation.

The Department will determine depletions from geothermal and power generation uses on a case-by-case basis.

3. Domestic, Multiple Domestic, and Municipal Uses:

DM Domestic
MD Multiple Domestic
MC Municipal.

The Department will calculate monthly depletions from domestic uses over 35 gallons per minute, exceeding 10 acre feet per year, multi-family domestic, and municipal uses by multiplying the annual volume by the monthly depletion factors set forth below.

Monthly Depletion Factors for Domestic, Multiple Domestic, and Municipal Uses

January	.0135
February	.0135
March	.0270
April	.0315
May	.0450
June	.0585
July	.0810
August	.0675
September	.0495
October	.0360
November	.0135
December	.0135

4. Irrigation including Lawn and Garden over 5 Acres:

IR Irrigation
LG Lawn and Garden.

The Department will calculate monthly depletions from irrigation uses (in acre feet) by multiplying the number of acres by the depletion factors set forth below.

Monthly Depletion Factors for Irrigation Uses

Month	Monthly Depletion Factor (feet per acre)
January	0.0
February	0.0
March	0.0
April	0.0
May	0.2604
June	0.4656
July	0.7417
August	0.5885
September	0.1177
October	0.0
November	0.0
December	0.0

The Department will calculate monthly depletions from lawn and garden uses to irrigate an area greater than 5 acres using the method for irrigation set forth above.

5. Stock Uses:

ST Stock.

The Department will calculate monthly depletions from stock ponds using the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

6. Commercial, Industrial, Institutional, Mining, and Other Uses:

CM Commercial
IN Industrial
IS Institutional
MN Mining.
OP Other Purpose

The Department will assign monthly depletions from commercial, industrial, institutional, mining, and other undefined uses as 50% of the annual volume spread in equal increments throughout the period of use. The Department will make any necessary changes to the assigned monthly depletions to reflect actual depletions when the appropriation is complete. The Department and the BLM may discuss the monthly depletions at the annual meeting and the Department will make the final monthly depletion determination.

7. Transbasin Diversions: The Department will calculate monthly depletions for transbasin diversions outside the drainage area of the Missouri River and its tributaries upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River at 100% of the diverted amount.

B. Groundwater.

The Department will subtract all groundwater uses over 35 gallons per minute, exceeding 10 acre feet per year, from the AWS monthly amounts regardless of location or source aquifer. The Department will calculate depletions from groundwater uses based on monthly depletion factors for the type of water use as listed in Appendix 1, section A and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

C. Stored Water.

The Department will calculate depletions from storage projects by determining the annual depletion based on the monthly depletion factors for the type of use for which the water is stored as listed in Appendix 1, section A and subtract such depletion from the AWS monthly amounts as set forth in the schedule below. For purposes of subtracting the annual depletion for the type of use from the AWS monthly amounts, the Department will apply the following depletion schedule to all reservoirs unless the appropriation issued specifies a different fill regimen.

Monthly Storage Depletion Schedule

Month	% of Calculated Annual Depletion
November	7%
December	8%
January	7%
February	7%
March	10%
April	21%
May	38%
June	2%
Total	100%

The Department will also subtract the monthly depletions from evaporation based on the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

History: En. Sec. 1, Ch. 170, L. 1997.

Part 6

Chippewa Cree Tribe — Montana Compact

85-20-601. Chippewa Cree Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on April 15, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see, United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. 666 (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, 721 F.2d 1189; and

WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Chippewa Cree Tribe within the State of Montana; and

WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have authority to negotiate this Compact pursuant to 1(a), of Article VI of the Tribal Constitution; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this

Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States;

NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water rights claims of the Chippewa Cree Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43560 cubic feet.

2. "Adverse effect" means an interference with the reasonable exercise of a water right.

3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).

5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of Article IV of this Compact.

8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

11. "Bypass" means the designated streamflow around or through a diversion.

12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

13. "Change in use" means a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this Article.

15. "Continuously store" or "continuous storage" means the right to fill and then continually refill the active storage capacity of an impoundment from the natural flow of the source on which the impoundment is located.

16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix 2.

18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6 showing drainage area boundaries.

19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish and wildlife use, protection, conservation or management through physical or operational modifications of impoundments, within the areas designated in Appendix 4.

23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

25. "Groundwater" means any water that is beneath the ground surface.

26. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.

28. “Lonesome Lake Coulee” means the mainstem of Lonesome Lake Coulee and its tributaries in Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in Appendices 5 & 6.

29. “Lower Big Sandy Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

30. “Minimum Pool” means the quantity of water in an impoundment, as measured in acre-feet, or by the water surface elevation in feet above sea level, that is not available for release for designated water uses.

31. “MR&I Water” means water for use for municipal, rural, industrial, domestic, and incidental drought relief purposes on the Reservation.

32. “Municipal/Domestic Uses” means water for domestic, public, commercial and industrial uses.

33. “Net Depletion” means the difference between the quantity of water diverted from a source and the quantity of water returned to the same source at or near the point of diversion.

34. “New reserved water rights” means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.

35. “Non-consumptive use” means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.

36. “Non-Irrigation Water Uses” means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.

37. “Parties” means the Tribe, the State of Montana, and the United States.

38. “Person” means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.

39. “Ratification date” means the date on which the Compact is finally approved by the Business Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

40. “Recognized under state law” when referring to a water right means a water right arising under state law, but does not include water rights arising under federal law.

41. “Release” means (verb) to discharge water from storage, or (noun) the discharge of water from storage.

42. “Reservation” means the Rocky Boy’s Reservation and includes all lands and interests in lands which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.

43. “Sage Creek” means the main stem of Sage Creek and its tributaries in Water Court Basin 40G from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

44. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during, or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to wells and springs.

46. "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof.

47. "Stockwatering" means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.

48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified water rights without regard to relative priority dates.

51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once it becomes apparent that the primary supply will be unable to meet the full annual demand.

52. "Surface Acres" means the horizontal area in acres associated with the water surface in an impoundment when filled to the maximum capacity.

53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water Right.

54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water Resources Department, or any successor agency.

55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's Reservation to divert, use, or store water as described by Article III of this Compact.

56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents and departments thereof.

57. "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof.

58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in Appendix 6.

59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently permeable to conduct groundwater and to yield water to wells and springs as shown in USGS Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 40H: Big Sandy Creek Basin.

1. Gravel Coulee/Lower Big Sandy Creek Drainages - 1690 AFY diversion - 1000 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for the purposes allowed in Section A.1.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

(2) Diversion. The Tribe shall have the right to divert or use or permit the diversion or use of 1690 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 1690 AFY:

(a) Direct Flow. The Tribe shall have the right to divert or use or permit the diversion or use of up to 1690 AFY from the direct flow of Gravel Coulee and Lower Big Sandy Creek and its tributaries. 1480 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 1690 AFY, the Tribe shall have the right to divert 1480 AFY from storage in Stoneman Reservoir for irrigation and non-irrigation purposes as more specifically provided in Sections A.1.e.(1) and (2) of Article III; provided that, the right to divert 1480 AFY from Lower Big Sandy Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee and Lower Big Sandy Creek.

(ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big Sandy Creek and Gravel Coulee drainages on the Reservation.

e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

(1) Irrigation.

(a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for irrigation.

(b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for non-irrigation purposes.

(b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow, storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation within the Lower Big Sandy and Gravel Coulee drainages.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy Creek.

ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel Coulee and Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of origin.

2. Box Elder Creek Drainage - 6940 AFY diversion - 4800 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wherever located, as set forth in

Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe may divert for the purposes allowed in Section A.2.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.

(2) Diversion. The Tribe shall have the right to use or permit the use of 6940 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 6940 AFY:

(a) Direct Flow. Of the 6940 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 6590 AFY from Box Elder Creek and its tributaries. 6310 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 6940 AFY, the Tribe shall have the right to divert a total of 6310 AFY from storage in one or more of the following reservoirs: Bonneau Reservoir, Brown's Reservoir, and any new impoundments for irrigation and non-irrigation purposes. The right to divert 6310 AFY from Box Elder Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder Creek drainage.

(ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder Creek drainage.

(iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Box Elder Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic purposes.

(1) Irrigation.

(a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

(b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

(c) Place of use. The 6280 AFY may be used to irrigate 1930 acres at the Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 30 AFY of water in the Box Elder Creek drainage may be used for non-irrigation purposes.

(b) Source. The 30 AFY for non-irrigation purposes may come from direct flow, storage, or groundwater or a combination thereof in the Box Elder Creek drainage. The 30 AFY for non-irrigation use may be developed from either the shallow alluvium or volcanic bedrock aquifers.

(3) Municipal / Domestic.

(a) Volume. 350 AFY of water in the Box Elder Creek drainage may be used for municipal/domestic purposes.

(b) Source. The 350 AFY for municipal/domestic purposes may come from the following sources:

i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.

ii. 200 AFY from the volcanic bedrock.

(4) Stockwatering - Evaporative Loss. Use of the Tribal Water Right set forth for stockwatering in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 44 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 130 AFY for stockwatering may come from the direct flow of Box Elder Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Box Elder Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box Elder Creek and its tributaries.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 280 AFY:

(1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the following proportions:

(a) 170 AFY from Duck Creek.

(b) 60 AFY from Camp Creek.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

(3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the Reservation, including groundwater that is hydrologically connected to surface water, in compliance with Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

(a) 40 AFY from Duck Creek.

(b) 10 AFY from Camp Creek.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp Creek and Duck Creek drainages on the Reservation.

e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

(c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation.

(2) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.

ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of Camp and Duck Creeks.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

4. Gorman Creek Drainage - 60 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 60 AFY.

(1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gorman Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gorman Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

5. Upper Big Sandy Creek Drainage - 290 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 290 AFY.

(1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

(3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b. of Article IV.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that, the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This diversion limit also applies to any change(s) of use of this right.

e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on the Reservation.

(c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within the drainage of origin.

(2) Irrigation.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

(b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the Reservation.

(c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the Reservation.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Upper Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

B. Basin 40J: Beaver Creek Basin - 740 AFY diversion - 260 AFY net depletion - 665 AF continuous storage.

1. Quantification - Source - Volume.

a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek. Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork Reservoir for non-irrigation purposes allowed in Section B.5. of Article III; provided that, the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections B.5.b. and c. of Article III.

b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation up to the limits on each source and the total limit of 740 AFY.

(1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to those purposes until such water is re-diverted from storage and applied to such purposes.

(2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

(3) Groundwater.

(a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

(b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in Section B.1.a.(2) of Article III, shall not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is not hydrologically connected to surface water.

2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

3. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver Creek drainage on the Reservation.

5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for non-irrigation purposes.

a. Non-Irrigation

(1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with Section B.1.c. of Article III.

(2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a combination of direct flow, storage and groundwater.

(3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the Reservation.

b. Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the Reservation. Water for stockwatering may not be

diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(3) Place of use. The Tribal Water Right for stockwatering in the Beaver Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of Beaver Creek.

(3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

C. Additional Development of Water.

In addition to the water rights specifically set forth in Sections A. and B. of Article III, the Tribe may develop water from the following sources:

1. Subject to Sections A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding any other provision of this Compact, may only be used in priority with other water rights.

2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of the new appropriation shall be the date of development and, notwithstanding any other provision of this Compact, may only be used in priority with other water rights; and further provided that, the maximum capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the stockwater right obtained pursuant to this section.

3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III

of this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's annual report and will identify the water right acquired.

4. The Tribe shall be entitled to use any new reserved water rights that may be created with acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The priority date of the excess water shall be the date of acquisition of the land.

5. After the ratification date of the Compact, the Tribe shall have the right to acquire off-Reservation water rights separate from acquisition of the land to which such water rights are appurtenant; provided that, water from the Tribal Water Right is not available for economic or other reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to Sections A.4.b.(1) and (2) of Article IV.

6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

D. Proposed Decree.

For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III and Section A.8. of Article IV is attached as Appendix 1.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact,

the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current and future water use and diversions will be identified by location and quantity. Final storage capacities will be based on project as-built plans, and will store no more than the water right set forth in Article III of this Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

3. Use.

a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, or persons authorized by the Tribe.

b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

4. Change in Use or Transfer.

a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application of water-saving methods to expand irrigation, provided that:

(1) for each source quantified in Article III, any change in use or transfer shall not result in uses that exceed the water amount quantified for that source;

(2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;

(3) any change in use or transfer shall not have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer provided that for change in use or transfer of groundwater, the burden as to adverse effect shall be as set forth in Section A.6. of Article IV; and

(4) any change in use or transfer shall not change the source of the water involved in any such changes.

(5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right

recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek that results in a change in the place of use, point of diversion or place or means of storage of the water outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(7) The Tribe may make a change in use or transfer of the irrigation water right with a source in Upper Big Sandy Creek drainage as set forth in Section A.5.e. of Article III so long as it does so within the diversionary limits set forth in Section A.5.d. of Article III; provided that, the net depletion shall not exceed 30 AFY.

b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation of the water transferred; and provided further that, no transfer or change in place of use shall be made to a location outside the watershed that forms the Missouri River drainage; and provided further that, if the Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such rights at the same price and on the same terms and conditions as those contained in the offer. Any change in use or transfer of any such water right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal water rights described in this Compact shall not be deemed to convert such rights to rights arising under state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right set forth in this Compact without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

(2) Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water rights may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

(3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until such time as the statutory or common law of the United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.

c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year after the ratification date of this Compact. The initial survey method shall be through use of data obtained by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or greater than photography. The method may be modified by agreement between the TWRD and the DNRC. Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

d. Net Depletion Table. Net depletion for Tribal water uses in the Beaver Creek drainage and for irrigation uses in the Upper Big Sandy Creek drainage shall be as set forth in the table attached as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

5. Reporting requirements.

a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

b. On an annual basis the TWRD shall provide the State and the United States with a listing of all new development of the water rights described in this Compact, the net depletion in the Beaver Creek drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfers of the water rights described in this Compact since the last report. The first report by the TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

6. Groundwater.

a. New Groundwater Development Without Adverse Effect.

(1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the ratification date of this Compact, the Tribe may develop or permit the development of groundwater; provided that, such development is without an adverse effect on water rights recognized under state law with a priority date before the date of development of the new appropriation.

(2) Prerequisite Administrative Remedy. The following procedure for determining whether new development of groundwater will have an adverse effect on existing groundwater rights recognized under state law shall be followed prior to seeking relief from the Compact Board:

(a) Application for development of a groundwater use on the Reservation shall be made to the TWRD.

(b) The TWRD shall review the application and make a determination of whether the new use will have an adverse effect on existing water rights recognized under state law with a priority date before the application date. Upon request by the TWRD, the DNRC shall provide information on existing state water rights as recorded in the DNRC database to the TWRD.

(c) If the TWRD determines that the new development will have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall deny the application. If the TWRD determines that the new development will not have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall forward the application with its determination to the DNRC.

(d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit who, according to the records of the department, has a water right with a priority date before the application date, and may be affected by the proposed development.

(e) DNRC and the TWRD shall attempt to resolve any disagreement on the determination of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized under state law with a priority date before the application date disagree with the determination of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

(f) In any proceeding concerning the effect of new groundwater development on the Reservation either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

(i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses recognized under state law with a priority date before the application date.

(ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date before the application date shall bear the burden of showing any adverse effect to the water right.

b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following wells are exempt from the requirement of showing no adverse effect:

(1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices as per the requirement to list existing uses in Section A.5. of Article IV.

(2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.

c. Ancestral Missouri River Channel Aquifer. Groundwater from the Ancestral Missouri River Channel Aquifer shall be a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

7. Moratorium.

a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not intended to apply to applications for change in appropriation under state law.

(1) The moratorium shall not apply to the following appropriations:

(a) an appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation;

(b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream;

(c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface water.

(2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice of the moratorium once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on all appropriators of water or holders of permits who, according to the records of the department, have a water right with a source in the affected drainages.

(3) The moratorium applies only to new permits issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure in making a determination as to whether water is available in excess of the Tribal Water Right and rights recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

(1) Proceedings initiated by TWRD.

(a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

(b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for its determination.

(c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal

(2) Proceedings initiated by DNRC.

(a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to determine whether to lift a moratorium.

(b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such data within the same time frame.

(c) The TWRD shall be given sixty (60) days following receipt of the data in support of the proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any supporting data and argument.

(d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60) days of receipt of the Tribe's statement.

(e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal.

c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved water rights, if any, on land acquired after the ratification date of this Compact, but before the date the moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and the tribe may make a change in use of, or transfer, including storage, of such water pursuant to Section A.4.a. of Article IV.

d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or combined appropriation from two or more wells or developed springs in a single drainage defined by this Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

8. Mutual Subordination. To reduce the need for daily administration of water use on and off the Reservation, water rights shall not be administered in priority, but shall be satisfied according to the following agreements.

a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right shall be subordinate to water rights recognized under state law upstream from any point on the Reservation with a priority date before the ratification date of this Compact. It is the intent of the parties that this subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected drainages. Appendix 3 may be modified due to clerical error or omission.

b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on downstream water rights recognized under State law has been mitigated by provisions of the Compact and by special measures set forth in drainage stipulations, any person claiming or holding a water right recognized under State law, or an interest in such water right, may not assert priority over, or make a call for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other forum.

9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of stockwatering.

10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife enhancement.

b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife enhancement zones on the map attached as Appendix 4.

11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface water during filling of the impoundment. To accomplish this the Tribe shall

build any structure to mimic natural processes by allowing water to flow through the structure, or bypass the structure during filling.

B. Big Sandy Creek Basin.

1. Operation of Bonneau Reservoir.

a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240 acre-feet, if water is available. The 240 acre-feet above the minimum pool shall be stored to satisfy the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from irrigation to other purposes shall be without adverse effect on downstream water uses recognized under state law with a priority date before the date of change, and measures to prevent adverse effect may include release of additional water from Bonneau Reservoir.

b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that, the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system; and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per year release set forth in Section B.1.c. of Article IV, and the minimum pool at all other times. The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to the use of on-Reservation conveyance and distribution systems to deliver this water.

c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water, once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all non-domestic and non-stockwater rights recognized under state law from the point of release to the confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that boundary exists on the effective date of this Compact, during release of the 240 AF of water to downstream water users in the months of July and August. A structure that will bypass the peak scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence of Big Sandy

Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows: Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being satisfied without the release, the Committee may, in any year, agree to forego the release. When streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV, exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by the Tribe, subject to the diversion limits designated in Article III.

e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c. of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

2. Water Use on Lower Big Sandy Creek Drainage.

a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions and all non-domestic and non-stockwatering water rights recognized under state law with a point of diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted by the Tribe subject to diversion limits designated in Article III.

b. Water Quality Issues.

(1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be established by TWRD and DNRC (or its representative) and groundwater level

and quality shall be measured on a quarterly basis to establish baseline conditions.

(2) Water Quality Monitoring Before Construction. Within one year following the effective date of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly sampling continued for a sufficient period of time to establish the water quality baseline conditions referred to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be used to establish a threshold value for water quality degradation associated with salinity which will trigger the requirement for more extensive study.

(3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate remedies. The analysis and recommendations may include sources of salinity off the Reservation.

(4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user, may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to issuance of an order to cease and desist the practice or practices leading to the salinity problems. The remedies set forth in this section shall be in addition to any remedies or water quality standards provided for under other applicable law.

C. Beaver Creek Drainage.

1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary. Location of the three gages shall be:

(1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;

(2) the confluence of the East and West Forks of Beaver Creek; and

(3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall also be installed in East Fork Reservoir following enlargement of the Reservoir.

2. Development of Management Plan. Based on the results of the five years of gage data on Beaver Creek, the Tribe and the Montana Department of Fish,

Wildlife and Parks shall work cooperatively to develop a fishery and recreational management plan. The plan may include modifications in minimum instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be deemed a modification of, this Compact. The management plan is not binding on any party and shall not be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department of Fish, Wildlife and Parks.

3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

a. The enlarged Reservoir shall be used only for recreational purposes during the five year moratorium. However, after the five year moratorium period and pending adoption of the management plan, the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth under Sections C.3.b., c., and d. of Article IV.

b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek if the flow at the confluence of East and West Fork or below the most downstream diversion on the Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and provided further that, the Tribe shall not be required to release water if the flow at the Reservation boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the following diversionary constraints are in effect.

a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass the structure year around.

b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round.

D. Enforcement - Chippewa Cree-Montana Compact Board.

1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree Business Committee; and one member selected by the other two members. If the Governor fails to select a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select the member. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:

a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between users of the Tribal Water Right and users of water rights recognized under state law including any contributor to a salinity problem. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Pre-requisite Administrative Remedy.

a. Any non-tribal water user concerned that a new development or change in use of water by the Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land to observe the challenged development or change in use.

b. The Tribe or any tribal water user concerned that a new development or change in use or transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD. If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged development or change in use or transfer.

c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint a technical expert for the purposes of Section B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of other Indian tribes.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands other than those of the Chippewa Cree Tribe.

B. General Disclaimers.

Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

3. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Compact from any existing or future federal storage facilities off the Reservation;

8. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

9. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights not protected by a drainage stipulation set forth in Appendix 2 of this Compact; provided that, the United States, on behalf of any other Indian tribe, or in its own right, may raise valid objections to any claims listed in Appendix 2 and Appendix 3 of this Compact;

10. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

11. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Tribe in the enjoyment of any water right in this Compact.

C. Rights Reserved.

The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

E. Expenditures of Money Contingent.

The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

The Tribe and the State of Montana agree to support federal legislation ratifying this Compact that will accomplish the following:

A. Off-Reservation Water Sources.

1. Lake Elwell Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section C.6. of Article III. The priority date of this water right shall be that established for the source of supply. This water right will be held in trust and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have the right to participate in any project to augment the water supply in the Milk River system by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point on the Reservation designated by the Tribe.

B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic Development Fund.

The State and Tribe agree to support federal legislation that will authorize and fund a municipal, rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior (January, 1996), through either a regional system or a system serving the Reservation only. The State and Tribe further agree to support federal legislation that will establish an economic development fund as agreed to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a demonstration of feasibility and appropriate allocation of costs.

C. Implementation Contingencies and Cost Share of Administration and Mitigation.

Implementation of this Compact shall be contingent upon the appropriation of necessary funds by the Congress and by the Montana Legislature. The performance of any obligation by any party under this Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost share for administration and mitigation necessary to implement the Compact to the Montana State Legislature and the Congress for appropriation on a schedule consistent with implementation as contemplated in this Compact.

1. The State and the Tribe agree to support federal legislation to appropriate $3,070,000 for the administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water Code.

2. The State and the Tribe agree to support state legislation to appropriate $150,000 for the following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

3. The state agrees to provide services, subject to the availability of funds, valued at $400,000 for administration required by the Compact and for water quality sampling required by this Compact.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, AND EFFECTIVENESS OF COMPACT

A. Ratification and Effectiveness of Compact.

1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become effective until the Reservoir is enlarged.

3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a party to this Compact -

a. if Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

b. if the municipal, rural, and industrial water supply system which the feasibility study identifies as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent water supply system as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

c. if appropriations are not authorized by Congress, including appropriations for planning, design, and other pre-construction work on the municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

d. if appropriations are not made in the manner contemplated by the federal legislation authorizing the Tribal municipal, rural, and industrial water supply system, or

e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later.

The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party, and the parties agree to resume negotiation in good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain in effect.

4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse support for federal legislation ratifying this Compact.

B. Incorporation Into Decrees and Disposition of Federal Suits.

1. The Tribe and the State agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B of Article VII.

2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation. If the court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal, the Compact shall be voidable by agreement of the parties. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provision of federal law.

3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United

States as trustee for the Tribe, in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

C. Tribal Settlement of Water Claims.

The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, including rights to the future development of water pursuant to Section C. of Article III, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe, whichever date is later.

D. Binding Effect.

Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the Tribe to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law; and further provided that, nothing contained in this Compact affects any claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons claiming water through any such other Indian tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States have signed this Compact on the 21st day of May, 1997.

History: En. Sec. 1, Ch. 265, L. 1997.

Compiler's Comments

Ratification Date: This compact was ratified upon filing with the Secretary of State on April 15, 1997.

Provision Exception: Section 2, Ch. 265, L. 1997, provided: "Notwithstanding the provisions of 7-6-204, Hill County may apply the interest accrued on the $50,000 water purchase contract with the state of Montana toward operation, maintenance, and future repairs to the Lower Beaver Creek reservoir. The Department is authorized to execute a contract with Hill County for the purchase of 800 acre-feet of water stored in Lower Beaver Creek Reservoir. The Department is authorized to assist the Tribe, Hill County, and any appropriate federal agency in drafting an Operating Agreement for coordination of release of the purchased water from Lower Beaver Creek Reservoir with reductions in the natural flow of Beaver Creek due to diversion and impoundment of water on the Reservation."

Part 7

United States Fish and Wildlife Service — Montana Compact

85-20-701. United States Fish and Wildlife Service-Montana compact ratified. The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on March 26, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the effective date of the Compact to water for Black Coulee and Benton Lake National Wildlife Refuges administered by the U.S. Fish and Wildlife Service within the State of Montana.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Black Coulee National Wildlife Refuge, see United States v. Aageson, No. CV-79-21-GF;

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Benton Lake and Black Coulee National Wildlife Refuges, in the State of Montana;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS, The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. §1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Benton Lake National Wildlife Refuge" means those lands located in Montana that were withdrawn and reserved by Executive Order No. 5228 of November 21, 1929.

(3) "Black Coulee National Wildlife Refuge" means those lands and interests in lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order 7801 of January 28, 1938.

(4) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(5) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(6) "Groundwater" means water that is beneath the ground surface.

(7) "Non-consumptive" means a water right considered to be non-consumptive by the decree, permit or law authorizing the use, because it results in no depletion of water from the source.

(8) "Parties" means the State of Montana and the United States.

(9) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(11) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(12) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

ARTICLE II
WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuges described. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article IV, section A of this Compact.

A. Benton Lake National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge:

a. Consumptive Use: The United States has a reserved water right to 2 acre-feet per year diverted at a maximum rate of 45 gpm from groundwater beneath the Benton Lake National Wildlife Refuge.

b. Natural Flow: The United States has a reserved water right to the natural flow in the Lake Creek drainage including the unnamed tributaries to Benton lake where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:

(1) all rights recognized under state law with a priority date prior to the effective date of this Compact;

(2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

2. a. Priority Date: The United States has a priority date of November 21, 1929, for the reserved water rights described in this Compact for Benton Lake National Wildlife Refuge.

b. Subordination: The natural flow water right is subordinate to:

(1) any use recognized under state law with a priority date before the effective date of this Compact;

(2) any use considered non-consumptive as defined by this Compact;

(3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

3. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion: Any point on the Refuge and by any means subject to the terms of this Compact.

5. Purposes: The United States right to water may be used for the following purposes, provided that, subject to the limitations set forth in Article III. section E., the United States may change the use of water identified for consumptive use.

a. Consumptive Use: The United States water right to groundwater shall be used at the Refuge headquarters for the purposes of the Refuge.

b. Natural Flow: The United States water right to natural flow shall be used on the Benton Lake National Wildlife Refuge for wildlife habitat maintenance and enhancement.

B. Black Coulee National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on Black Coulee National Wildlife Refuge:

2. Natural Flow: The United States has a reserved water right for the natural flow in the Black Coulee drainage where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:

(1) all rights recognized under state law with a priority date prior to the effective date of this Compact;

(2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

3. a. Priority Date: The United States has a priority date of January 28, 1938 for the water rights described in this Compact for Black Coulee National Wildlife Refuge.

b. Subordination: The natural flow water right is subordinate to:

(1) any use recognized under state law with a priority date before the effective date of this Compact;

(2) any use considered non-consumptive as defined by this Compact;

(3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

4. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.

5. Points and means of diversion: any point on the Refuge and by any means subject to the terms of this Compact.

6. Purposes: The United States water right to natural flow shall be used on the Black Coulee National Wildlife Refuge for wildlife habitat maintenance and enhancement.

C. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Fish and Wildlife Service refuges. The United States, may as part of its reserved water right, divert water for fire suppression at all of the Fish and Wildlife Service Refuges as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for natural flow.

ARTICLE III
IMPLEMENTATION

A. Basin Closure

1. In the following drainage basins upstream of the most downstream point on the Refuges for which a reserved water right is described by this Compact, the Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the Department may issue certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year, and permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream:

Benton Lake National Wildlife Refuge:
  Lake Creek Watershed including the unnamed tributaries of Benton Lake
Black Coulee National Wildlife Refuge:
  Black Coulee Watershed

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the source subject to closure.

B. Enforcement of Water Right

1. The United States, the state, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a refuge for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for natural flow described in this Compact.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law.

C. Use of Water Right

The rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land described in Article II, sections A.5. and B.5 and C.

D. Location of Natural Flow Rights

The United States' reserved water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary to land administered by the Fish and Wildlife Service.

E. Change in Use

1. Natural flow: Reserved water rights specified in this Compact for natural flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.C. shall not be deemed a change or alteration in use, or violation of a reserved water right for natural flow.

2. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that:

(1) the action shall be in fulfillment of the purposes of the refuge described in Article II, sections A.5;

(2) the total use shall not exceed the amount described in this Compact; and

(3) the action shall not adversely affect a water right that is recognized under state law.

3. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Article II, Section C. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on:

(1) actions during the preceding year affecting the use of a consumptive use right described in this Compact;

(2) the initiation of new uses that were completed during the preceding year; and

(3) any data and documents generated or received by the Fish and Wildlife Service during the preceding year on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.

4. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of:

(1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact;

(2) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;

(3) any certificate of water right issued during the preceding year for appropriation of groundwater; and

(4) any permit issued during the preceding year for a stock watering pond.

ARTICLE IV
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights

1. The relationship between the water rights of the Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members in Montana.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests in the State of Montana.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for Benton Lake and Black Coulee National Wildlife Refuges, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

D. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Fish and Wildlife Service, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

10. to prevent the United States from constructing or modifying an outlet to an impoundment at a Refuge in compliance with all applicable law;

11. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. Severability

The provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3), MCA, the water rights described in this Compact for each Fish and Wildlife Service Refuge shall be considered as separate Compacts.

G. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V
FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. Except as otherwise provided in Article IV, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 for Benton Lake National Wildlife Refuge and Appendix 3 for Black Coulee National Wildlife

Refuge to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice any claims made by the United States for the Fish and Wildlife Service Refuges described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

3. Continuation of Negotiations: The parties were unable to finalize agreement on quantification of the water rights for: Red Rocks National Wildlife Refuge and Wilderness Area; the National Bison Range; Bowdoin National Wildlife Area; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims

The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for Black Coulee and Benton Lake National Wildlife Refuges, relinquishes forever on the effective date of this Compact all said claims to water within the State of Montana for Black Coulee and Benton Lake National Wildlife Refuges. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____________, 19__.

History: En. Sec. 1, Ch. 137, L. 1997.

TITLE 86

RESERVED

TITLE 87

FISH AND WILDLIFE

Ch.
1. Organization and Operation.
2. Fishing, Hunting, and Trapping Licenses.
3. Restrictions and Regulations.
4. Commercial Activities.
5. Wildlife Protection.

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ORGANIZATION AND OPERATION

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Part 1
General Provisions

87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(2) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

(3) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

(4) "Warden" means a state fish and game warden.

History: En. 26-101.1 by Sec. 1, Ch. 511, L. 1973; amd. Sec. 3, Ch. 417, L. 1977; R.C.M. 1947, 26-101.1; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 28, L. 1991.

87-1-102. Penalties. (1) A person who purposely, knowingly, or negligently violates a provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than $500 or more than $2,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than $300 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than $200 or more than $600 or imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than $100 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than $500 or more than $2,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(6) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R.C.M. 1921; amd. Sec. 23, Ch. 192, L. 1925; re-en. Sec. 3706, R.C.M. 1935; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955; amd. Sec. 29, Ch. 511, L. 1973; amd. Sec. 34, Ch. 9, L. 1977; amd. Secs. 13, 14, Ch. 417, L. 1977; amd. Sec. 1, Ch. 465, L. 1977; R.C.M. 1947, 26-324; amd. Sec. 1, Ch. 334, L. 1987; amd. Sec. 1, Ch. 132, L. 1989; amd. Sec. 2, Ch. 277, L. 1991; amd. Sec. 7, Ch. 609, L. 1991; amd. Sec. 1, Ch. 101, L. 1995; amd. Sec. 1, Ch. 417, L. 1995; amd. Sec. 96, Ch. 552, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 552 inserted (6) relating to suspension of a license or permit, notice to the person, and surrender of the license or permit. Amendment effective July 1, 1997.

Cross-References

Definition of enter or remain unlawfully, 45-6-201.

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

Shooting from or across highway, 61-8-369.

Littering unlawful, 75-10-212, 75-10-233, 87-2-112.

Unlawful disposition of dead animals, 75-10-213.

Penalty for taking of publicly owned wild buffalo or bison present on private property — supplemental feeding, 81-2-121.

Penalty for violation of importation permit and health certificate requirements, 81-2-708.

Restitution for illegal killing or possession of certain wildlife, 87-1-111.

Unlawful possession of hunting license or permit of another, 87-2-114.

Felony sale or possession of wildlife — penalty, 87-3-118.

87-1-103. Fines, bonds, and penalties. All fines, bonds, and penalties mentioned in this title may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R.C.M. 1921; amd. Sec. 25, Ch. 77, L. 1923; re-en. Sec. 3753, R.C.M. 1935; amd. Sec. 41, Ch. 511, L. 1973; R.C.M. 1947, 26-1001.

87-1-104. Payment of cost bill to county. In a prosecution for the violation of fish and game laws where costs are incurred, a cost bill shall be prepared. The cost bill shall include the cost of board of prisoners and shall be presented to the department of administration. If the costs are allowed, the state treasurer shall pay them out of the fish and game moneys in the state special revenue fund to the treasurer of the county where the costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R.C.M. 1921; re-en. Sec. 3754, R.C.M. 1935; amd. Sec. 42, Ch. 511, L. 1973; R.C.M. 1947, 26-1002; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Payment of prosecution cost bills, 87-1-601.

87-1-105. Duty of attorney general and county attorneys. The attorney general of the state is the legal adviser of the department and shall, together with the several county attorneys, enforce the provisions of this title.

History: En. Sec. 26, Ch. 193, L. 1921; re-en. Sec. 3675, R.C.M. 1921; re-en. Sec. 3675, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-126; amd. Sec. 1, Ch. 44, L. 1979.

87-1-106. Fish and game offices. The principal offices of the commission and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R.C.M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; re-en. Sec. 3652, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973; R.C.M. 1947, 26-103(part); amd. Sec. 1, Ch. 340, L. 1985.

87-1-107 reserved.

87-1-108. Suspension of privileges for failure to comply with citation or sentence. (1) A person who fails to comply with the terms of a court citation, the terms of an administrative suspension, or fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for the person's arrest, shall surrender any current hunting, fishing, and trapping licenses to the department, and the person's privileges to hunt, fish, and trap and to hold a valid license to hunt, fish, or trap are suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses the person's privileges under this section or through an administrative process must be notified by the department or by the administrative authority in person or by mail. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of this section is guilty of a misdemeanor and subject to the penalties prescribed in 87-1-102.

History: En. Sec. 3, Ch. 277, L. 1991; amd. Sec. 97, Ch. 552, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 552 in (1), near beginning, inserted "the terms of an administrative suspension"; in (2), in first sentence, inserted "or through an administrative process" and inserted "or by the administrative authority"; and made minor changes in style. Amendment effective July 1, 1997.

87-1-109. Fish and game violation as inchoate offense. Any violation of this title is an offense for purposes of the crimes of attempt, solicitation, and conspiracy set out in Title 45, chapter 4.

History: En. Sec. 9, Ch. 277, L. 1991.

87-1-110. Fish and wildlife code not to supersede criminal code — statute of limitations. (1) The penalty provisions of this title are intended to supplement but not supersede the provisions of Title 45. Nothing in this title limits the prosecution of any conduct defined as an offense in Title 45.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of any offense under this title are those time limitations specified in 45-1-205.

History: En. Sec. 1, Ch. 161, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 161, L. 1997, provided: "[This act] is effective on passage and approval." Approved March 26, 1997.

87-1-111. *(Temporary)* **Restitution for illegal killing or possession of certain wildlife.** (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section. *(Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)*

87-1-111. *(Effective July 1, 2003)* **Restitution for illegal killing or possession of certain wildlife.** (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing, taking, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, river-dwelling grayling, and white sturgeon, $300;

(e) paddlefish and fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.

History: En. Sec. 1, Ch. 523, L. 1987; amd. Sec. 2, Ch. 142, L. 1989; amd. Sec. 3, Ch. 409, L. 1989; amd. Sec. 4, Ch. 329, L. 1991; amd. Sec. 2, Ch. 417, L. 1995.

87-1-112. Finding required. Before restitution may be ordered pursuant to 87-1-111, the finder of fact at trial or the court upon entry of a guilty plea must find that such illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under 87-1-111 when bond or bail is forfeited.

History: En. Sec. 2, Ch. 523, L. 1987; amd. Sec. 3, Ch. 142, L. 1989.

87-1-113. Payment — penalty for nonpayment. (1) In each case of conviction, the court before which the conviction is obtained shall order payment of the sum stated in 87-1-111.

(2) Failure to make payment in the time and manner prescribed by the court constitutes civil contempt of court and is punishable as provided in Title 3, chapter 1, part 5.

History: En. Sec. 3, Ch. 523, L. 1987.

87-1-114. Disposition of proceeds. All money collected by a court pursuant to 87-1-111 through 87-1-113 must be remitted to the state treasurer for deposit in the state general fund.

History: En. Sec. 4, Ch. 523, L. 1987; amd. Sec. 4, Ch. 142, L. 1989; amd. Sec. 74, Ch. 509, L. 1995.

Part 2
Department of Fish, Wildlife, and Parks

Part Cross-References

Establishment of Department and appointment of Director, 2-15-3401.

Fish and Wildlife Crimestoppers Board, 2-15-3404.

Cooperative agreements with district weed boards, 7-22-2151.

87-1-201. *(Temporary)* **Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources are appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

87-1-201. *(Effective October 1, 2001)* **Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) It may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is hereby authorized to make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of chapter 2 as in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state.

History: Ap. p. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R.C.M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; re-en. Sec. 3653, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1941; amd. Sec. 1, Ch. 40, L. 1951; amd. Sec. 1, Ch. 157, L. 1955; amd. Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; amd. Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; amd. Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-104, R.C.M. 1947; Ap. p. Sec. 4, Ch. 267, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.4, R.C.M. 1947; Ap. p. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.5, R.C.M. 1947; R.C.M. 1947, 26-104, 26-202.4, 26-202.5(2); amd. Sec. 2, Ch. 44, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 459, L. 1995.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Game wardens' and peace officers' retirement — state contribution, 19-8-504.

Local government denied powers affecting Title 87, 7-1-111.

Suspension, demotion, or removal of employees, 87-1-403.

Enforcement of fish and wildlife laws — generally, 87-1-404.

Enforcement of Department orders and rules, 87-1-404, 87-1-502, 87-1-506.

Seizure of game or hides, 87-1-506.

Money from seized game or hides, 87-1-513, 87-1-601.

Money from fines, 87-1-601, 87-4-808.

Disposition of fees for licenses and permits, 87-1-601, 87-1-605, 87-1-701, 87-1-708, 87-1-710, 87-2-204, 87-4-411, 87-4-602.

Disposition of sale proceeds from confiscated birds and animals, 87-1-601, 87-4-808.

Fish and wildlife appropriations, 87-1-601.

Sources of funds, 87-1-601, 87-1-605, 87-1-701, 87-1-708, 87-1-710.

Use of proceeds from auction of mountain sheep license, 87-2-722.

Department jurisdiction over game farms, 87-4-408.

Commission authorized to regulate grizzly bear, 87-5-302.

Permit for carrying weapons, 87-5-401.

Stream protection — enforcement powers of Department, 87-5-509.

87-1-202. Posting and publication of orders, rules, and regulations. The orders, rules, and regulations of the department shall be published and posted in the following manner:

(1) Those having general application throughout the state shall be published in such manner and to such an extent as the department deems necessary and may direct.

(2) Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable and shall be posted in three conspicuous places in the locality or district in which they are applicable.

History: En. Sec. 28, Ch. 193, L. 1921; re-en. Sec. 3677, R.C.M. 1921; amd. Sec. 11, Ch. 192, L. 1925; re-en. Sec. 3677, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-128.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Boats — publication of orders and rules, 23-2-504.

Privilege of entry unless posted, 45-6-201.

Publication of boundaries of fish and game districts, preserves, refuges, sanctuaries, or rest grounds, 87-5-402.

87-1-203. Effect of orders, rules, and regulations. All orders and rules and regulations for the enforcement of the powers granted to the department shall take effect and be in force after publication and posting as prescribed in this chapter and when so published or posted shall constitute legal notice.

History: En. Sec. 29, Ch. 193, L. 1921; re-en. Sec. 3678, R.C.M. 1921; re-en. Sec. 3678, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-129.

87-1-204. Political activity of employees. While retaining the right to vote as he may please and to express his opinions on all political questions, no employee of the department may use his official authority or influence for the purpose of interfering with an election or affecting the results thereof or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921; re-en. Sec. 3658, R.C.M. 1921; re-en. Sec. 3658, R.C.M. 1935; amd. Sec. 1, Ch. 21, L. 1955; amd. Sec. 4, Ch. 188, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-109.

Cross-References

Rules of conduct for public officers and public employees, 2-2-121.

87-1-205. Grievance procedure. An employee of the department, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, who has exhausted all administrative remedies within the department, is entitled to a hearing before the board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through 2-18-1013. Any order of the board is binding upon the department.

History: **En. 26-109.1 by Sec. 18, Ch. 417, L. 1977; R.C.M. 1947, 26-109.1; amd. Sec. 3, Ch. 44, L. 1979.**

Cross-References

Final administrative action for purposes of filing grievance, 87-1-403.

87-1-206. Bounty claims for wild animals. (1) The department of fish, wildlife, and parks shall pay bounty claims for wild animals which have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals as the bounty claims are presented, not exceeding $7,500 per calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department of fish, wildlife, and parks for rejection or approval. If the claim or certificate is rejected, it shall be returned by the department to the board of livestock. If approved, it shall be delivered to the department of administration for allowance or disallowance. Nothing in this section takes from the department of fish, wildlife, and parks the exclusive power to administer the fish and game moneys at its discretion.

(3) If the department of administration allows the claim, the department shall draw a warrant on the state fish and game money in the state special revenue fund for the amount approved in favor of the claimant, in the order in which the claim is approved.

History: **En. Sec. 2, Ch. 174, L. 1939; amd. Sec. 23, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-210; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 33, Ch. 325, L. 1995.**

Cross-References

Claims procedure, Title 81, ch. 7, part 1.

87-1-207. Establishment of checking stations. The department is authorized to establish checking stations where deemed necessary to inspect licenses of hunters and fishermen and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and fishermen.

History: **En. Sec. 1, Ch. 270, L. 1973; R.C.M. 1947, 26-137.**

Cross-References

Duty of wardens, 87-1-502, 87-2-109.

87-1-208. Inspection at checking station. Every person, upon the request of the director or his authorized representative or of any game warden, shall produce for inspection any current fish and game license which has been issued to such person and shall produce for inspection any game animals, birds, fish, or fur-bearing animals in his possession. Hunters or fishermen entering or leaving areas for which checking stations have been established must stop and report if a checking station is on the hunter's or fishermen's route of travel to or from the hunting or fishing area. Failure to stop and report at a checking station when personnel are on duty shall constitute a misdemeanor.

History: **En. Sec. 2, Ch. 270, L. 1973; R.C.M. 1947, 26-138.**

Cross-References

Carrying and exhibiting license, 87-2-109.

87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and waters for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and waters without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973; amd. Sec. 1, Ch. 157, L. 1975; amd. Sec. 4, Ch. 417, L. 1977; R.C.M. 1947, 26-104.6; amd. Sec. 2, Ch. 379, L. 1979; amd. Sec. 2, Ch. 230, L. 1981; amd. Sec. 2, Ch. 418, L. 1981; amd. Sec. 50, Ch. 519, L. 1983; amd. Sec. 2, Ch. 340, L. 1985; amd. Sec. 151, Ch. 370, L. 1987; amd. Sec. 1, Ch. 110, L. 1993; amd. Sec. 1, Ch. 184, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 184 in (3)(a) inserted second and third sentences allowing the conveyance of certain Department interests in land and waters to governmental entities through direct sale rather than through a bidding process; and made minor changes in style. Amendment effective April 1, 1997.

Cross-References

Acquisition of recreational areas, Art. IX, sec. 4, Mont. Const.; 23-1-102; 23-2-103.

Leases for lands or waters, 23-1-102.

Creating state campground subject to local subdivision review, Title 76, ch. 3.

State lands sales, Title 77, ch. 1, parts 1 and 2.

Acquisition of hunting rights on land adjoining federal wildlife preserve, 87-1-227.

Funding for wildlife habitat, 87-1-242.

Commission approval of acquisitions, exchanges, or sales, 87-1-301.

Acquisition or exchange of lands, 87-1-301, 87-1-701, 87-1-703, 87-1-709, 87-1-711.

Acquisition or exchange of waters, 87-1-301, 87-1-713, 87-1-714.

Uses to be itemized in lease and easement agreements, 87-1-303.

Acquisition of recreational facilities, 87-1-605.

Fish obtained for propagation, 87-4-601.

87-1-210. Research, training, and other projects. (1) The department may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train men for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

History: En. 26-104.7 by Sec. 8, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.7.

Cross-References

Cooperative agreements, 23-1-107, 87-1-228, 87-1-303, 87-5-108.

State scientific and recreational park, Title 23, ch. 1, part 2; 87-5-404.

Hunter management and hunting access enhancement programs, 87-1-265 through 87-1-269.

Future fisheries improvement program, 87-1-272, 87-1-273.

87-1-211. Repealed. Sec. 3, Ch. 340, L. 1985, and Sec. 2, Ch. 648, L. 1985.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R.C.M. 1921; re-en. Sec. 3668, R.C.M. 1935; amd. Sec. 1, Ch. 186, L. 1969; amd. Sec. 7, Ch. 417, L. 1977; R.C.M. 1947, 26-119.

87-1-212. Terminated. Sec. 6, Ch. 234, L. 1991.

History: En. Sec. 1, Ch. 234, L. 1991.

87-1-213 and 87-1-214 reserved.

87-1-215. Repealed. Sec. 4, Ch. 346, L. 1995.

History: En. Sec. 2, Ch. 401, L. 1991.

87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease.

(3) The department and the department of livestock are strongly urged to enter into an agreement with the national park service for the long-term management of the Yellowstone national park wild buffalo or bison herd. If the national park service does not proceed in good faith in a timely manner to enter a long-term management agreement that, in the determination of the department and the department of livestock, responds adequately to the needs of Montana, the departments are strongly urged to take appropriate court action. The department and the department of livestock shall prepare a joint report to the 55th legislature regarding the present state of wild buffalo or bison management in Montana and any progress on an agreement for the long-term management of the Yellowstone national park herd.

(4) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.

History: En. Sec. 2, Ch. 346, L. 1995.

Cross-References

Taking of publicly owned wild buffalo or bison on private property, 81-2-121.

Nongame and endangered species — legislative policy, 87-5-103.

87-1-217 through 87-1-220 reserved.

87-1-221. Acquisition, importation, and propagation of fish and game — waterfowl food. The department may:

(1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;

(2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;

(3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms, or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;

(4) appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals or game or nongame birds;

(5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

History: En. 26-104.4 by Sec. 5, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.4.

Cross-References

Predator control, Title 81, ch. 7, part 1.

Construction and maintenance of hatcheries, 87-3-201.

87-1-222. Construction and maintenance of fish hatcheries and fish ladders. (1) The department shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The department may purchase and maintain, at the expense of the state fish and game fund, suitable fish screens, fish wheels, or other devices to install in irrigating ditches to prevent fish entering said ditches.

(3) The department may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The department may spend from fish and game funds sums necessary for this purpose.

History: En. 26-104.5 by Sec. 6, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.5.

Cross-References

Propagation and distribution of fry or fingerlings, 87-3-201, 87-3-202.

87-1-223. Control of state waters for propagation of fish. The department may control the waters of any lake, pond, or stream that lies wholly within the limits of land owned by the state so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department, the department shall notify the department of natural resources and conservation that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed or a sufficient general description when not so surveyed. The department of natural resources and conservation shall make that entry upon its books and maps to serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of natural resources and conservation shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is claimed. This right may not continue for more than 1 year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department may be terminated upon giving 60 days' notice of the termination to the department.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R.C.M. 1921; re-en. Sec. 3667, R.C.M. 1935; amd. Sec. 16, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-118; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 484, Ch. 418, L. 1995.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Protection of fishing streams against construction and hydraulic projects, Title 87, ch. 5, part 5.

87-1-224. Destruction of beaver and beaver dams for protection of public health. (1) When a complaint is made to the department of environmental quality that beaver are obstructing the free flow of a stream flowing through a settled area and into which stream sewage of a town or city is dumped and the obstruction endangers public health, the department of environmental quality shall immediately investigate the complaint. If it finds that the work of the beaver endangers public health, it shall report the facts to the department.

(2) The department shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which must be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit within 10 days after its issuance. If the landowner refuses to remove the beaver or the dams in the 10-day period or if the landowner does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(3) The department shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives must be furnished by the county in which the beaver dams are located.

History: En. 3722(A), R.C.M. 1935 by Sec. 1, Ch. 173, L. 1943; amd. Sec. 32, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 485, Ch. 418, L. 1995.

Cross-References

General power and duties of Department of Public Health and Human Services, 50-1-202.

Destruction of beaver and muskrat houses unlawful, 87-3-503.

87-1-225. Regulation of wild animals damaging property — public hunting requirements. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if he:

(a) allows public hunting during established hunting seasons; or

(b) does not significantly reduce public hunting through imposed restrictions.

(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.

(3) Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops thereon, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method be not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. No wild ferocious animal damaging property or endangering life shall be covered by this section.

History: En. Sec. 1, Ch. 60, L. 1957; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-135; amd. Sec. 1, Ch. 569, L. 1987; amd. Sec. 1, Ch. 568, L. 1989.

Cross-References

Compensation for damage caused by animal in captivity, 87-1-233.

Damage to private property, 87-1-304.

Meat donated to public entities, 87-1-512.

Taking of wildlife to protect persons or livestock, 87-3-130.

Permit for removal of beaver and dams, 87-3-501.

87-1-226. Disposition of meat of animals damaging property. (1) The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, the department of public health and human services, or charitable institutions. The department shall provide transportation and distribution of the meat.

(2) Any meat not accepted by state institutions, school lunch programs, the department of public health and human services, or charitable institutions shall be sold as provided in 87-1-511.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973; R.C.M. 1947, 26-136; amd. Sec. 1, Ch. 120, L. 1985; amd. Sec. 559, Ch. 546, L. 1995.

Cross-References

Damage to private property, 87-1-304.

Meat donated to public entities, 87-1-512.

Taking of wildlife to protect persons or livestock, 87-3-130.

87-1-227. Hunting rights on adjoining federal wildlife preserve. (1) The department shall negotiate for and enter into written agreements with owners, lessors, lessees, or others having control of areas, tracts, or parcels of land adjoining or contiguous to any United States federal wildlife preserve, including any wildlife refuge for migratory waterfowl in any section of Montana, for the purpose of securing equal hunting and shooting rights for all resident holders of fish and game licenses in Montana on such adjoining and contiguous lands and preventing such preserves from being surrounded by lands whereon such licensees may not enter. The department shall, further, open or cause to be opened to public hunting and shooting of migratory waterfowl on any roads, lanes, and trails not a part of the traveled portion of any federal-aid highway system within a 1-mile limit from the boundaries of any such preserve or refuge. The department shall cause any such area, tract, road, lane, or trail to be plainly posted with clear signs showing the boundaries of the areas, tracts, roads, lanes, or trails open to shooting and hunting by licensees.

(2) The department is hereby authorized to negotiate the payment of a reasonable sum to landowners, lessors, or lessees for the right of the department to create a public shooting area upon their lands. The amount that may be paid for such purpose shall rest in the discretion of the department.

History: En. Secs. 1, 2, Ch. 224, L. 1943; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1120, 26-1121.

Cross-References

Consent to federal acquisition of migratory bird reservations, 2-1-211.

Cooperative agreements, 87-1-303.

Posting of preserve and refuge boundaries, 87-5-402.

87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855. (1) Whereas, by treaty of July 16, 1855, between the United States of America and the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the tribes have certain rights to fish and hunt; and whereas, it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving hunting and fishing. Therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) authorizing individuals to serve on a state-tribal cooperative board to develop hunting and fishing regulations and reimbursing those individuals' expenses pursuant to 2-18-501 through 2-18-503;

(b) doing what in its judgment is necessary by way of granting to tribal Indians state permits to hunt and fish off reservation on open and unclaimed lands, to be issued without charge to the Indians, or allowing Indians to hunt without licenses, permits, or stamps;

(c) issuing jointly with the council hunting and fishing licenses, permits, and stamps under terms established by mutual agreement and recognized as valid for hunting and fishing throughout the state. These joint licensing and permit requirements supersede the general licensing and permit requirements set forth in this title.

(d) authorizing all revenues collected from sale of joint licenses, permits, and stamps to be remitted to the council for the purpose of a fish and wildlife program;

(e) transferring to the council an amount equal to all fines and restitution collected in state court for fish and wildlife violations within reservation boundaries for use in a fish and wildlife program;

(f) policing Indian and other lands for the protection of fish and game and providing responsibility for redress of fish and game violations to state or tribal courts; and

(g) in general carrying out the purposes of this section.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford an opportunity to comment on the contents of the agreement.

History: Ap. p. Preamble, Sec. 1, Ch. 198, L. 1947; Sec. 26-131, R.C.M. 1947; Ap. p. Preamble, Sec. 1, Ch. 198, L. 1947; amd. Sec. 2, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-132, R.C.M. 1947; R.C.M. 1947, 26-131, 26-132; amd. Sec. 13, Ch. 309, L. 1981; amd. Sec. 1, Ch. 590, L. 1989; amd. Sec. 1, Ch. 266, L. 1993.

87-1-229. Entry on private land — policy. It is the policy of the department to meet with and work cooperatively with individual private landowners on policies regarding entry of the department to private landowners' land and to work with public and private land managers to resolve and reduce user conflicts.

History: En. Sec. 1, Ch. 268, L. 1995.

Cross-References

Protection of private property — duty of wardens, 87-1-504.

87-1-230 reserved.

87-1-231. Tattooing of bears, wolves, tigers, mountain lions, or coyotes — when required — penalty. (1) Any bear, wolf, tiger, mountain lion, or coyote that is captured alive to be later released or which is held in captivity for any purpose must be reported to the department within 3 days of the capture or commencement of captivity. If a person capturing or holding in captivity such animal fails to report an animal as required by this section, such failure is a misdemeanor punishable as provided in 87-1-102.

(2) Each animal reported as required in subsection (1) shall be permanently tattooed or otherwise permanently identified in a manner that will provide positive individual identification of such animal. No tattoo is required under this section if the animal is subject to a permanent, individual identification process by another state or federal agency.

(3) Any person holding a bear, wolf, tiger, mountain lion, or coyote in captivity shall immediately report to the department any death, escape, release, transfer of custody, or other disposition of such animal.

History: En. Sec. 1, Ch. 566, L. 1985.

Cross-References

Game farms, Title 87, ch. 4, part 4.

87-1-232. Tattoo records. (1) The department shall maintain a record of each animal reported to it pursuant to 87-1-231. The record shall indicate:

(a) the person by whom the animal was captured or is held in captivity;

(b) the location of the capture or captivity;

(c) the date the animal was tattooed;

(d) the purpose of the captivity or capture; and

(e) any death, escape, release, transfer of custody, or other disposition of such animal.

(2) The department shall establish by rule a fee to be charged, which may not exceed the administrative cost of maintaining the record required by this section.

History: En. Sec. 2, Ch. 566, L. 1985.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-1-233. Compensation for damage caused by animal held in captivity. If any bear, wolf, tiger, mountain lion, or coyote that is held in captivity or that escapes from such captivity causes any damage to the personal property of another person, compensation for such damage must be paid by the person holding or who held the animal in captivity.

History: En. Sec. 3, Ch. 566, L. 1985.

Cross-References

Regulation of wild animals damaging property, 87-1-225.

87-1-234. Exceptions to tattoo and compensation requirements. Sections 87-1-231 through 87-1-233 do not apply to those animals:

(1) captured and released as part of an ongoing game management program or an ongoing predator control program unless such animals have been involved in livestock killing; or

(2) captured and released as part of a scientific, educational, or research program as certified by the department.

History: En. Sec. 4, Ch. 566, L. 1985.

Cross-References

Taking fish or game for scientific purposes, 87-2-806.

87-1-235 through 87-1-240 reserved.

87-1-241. *(Temporary)* **Acquisition of wildlife habitat — rules.** (1) Before acquisition of any interest in land for the primary purpose of securing wildlife habitat the commission shall by rule establish a policy for making such acquisitions. With regard to any specific acquisition the policy shall provide for a comprehensive analysis of:

(a) the wildlife populations and use currently associated with the property;

(b) the potential value of the land for protection, preservation, and propagation of wildlife;

(c) management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest;

(d) any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts;

(e) any significant potential social and economic impacts to affected local governments and the state, including but not limited to impacts on:

(i) tax revenue available for the operation of taxing jurisdictions within the county;

(ii) services required to be provided by local governments;

(iii) employment opportunities within the counties;

(iv) local schools; and

(v) private businesses supplying goods and services to the community;

(f) a land maintenance program to control weeds and maintain roads and fences; and

(g) any other matter considered necessary or appropriate by the commission.

(2) The analysis made of any proposed acquisition must be made available for review by each owner of land adjacent to the property that is the subject of analysis, and to any member of the public. A public hearing must be held in the affected area after the analysis has been made available to the public. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

History: En. Sec. 1, Ch. 598, L. 1987; amd. Sec. 1, Ch. 515, L. 1989.

Cross-References

State lands sales, Title 77, ch. 1, parts 1 and 2.

Acquisition and sale of lands or waters, 87-1-209.

Commission approval of acquisitions, exchanges, or sales, 87-1-301.

Acquisition or exchange of lands, 87-1-301, 87-1-701, 87-1-703, 87-1-709, 87-1-711, 87-1-713.

Acquisition or exchange of waters, 87-1-301, 87-1-713, 87-1-714.

Rules for use of lands and waters, 87-1-303.

87-1-242. *(Temporary)* **Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, $77;
(b) Nonresident antelope, $20;
(c) Nonresident moose, $20;
(d) Nonresident mountain goat, $20;
(e) Nonresident mountain sheep, $20;
(f) Class D-1, nonresident mountain lion, $20;
(g) Nonresident black bear, $20;
(h) Nonresident wild turkey, $10;
(i) Class AAA, sportsman's, $7;
(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1), except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under 87-1-268, must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

87-1-242. *(Effective October 1, 2001)* **Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, $77;
(b) Nonresident antelope, $20;
(c) Nonresident moose, $20;
(d) Nonresident mountain goat, $20;
(e) Nonresident mountain sheep, $20;
(f) Class D-1, nonresident mountain lion, $20;
(g) Nonresident black bear, $20;
(h) Wild turkey nonresident, $10;
(i) Class AAA, sportsman's, $7;
(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase after March 1, 1988, in the fee for the Class B-7 license or any license or permit listed in subsection (1) must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income therefrom, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) (a) Until March 1, 1991, 20% of the money allocated by this section must be credited to the account created by 87-1-601(5) for use in the manner prescribed therein for the development and maintenance of real property used for wildlife habitat.

(b) On and after March 1, 1991, 20% of the money allocated by this section must be used as follows:

(i) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(ii) the remainder and any money not allocated for development and maintenance under subsection (4)(b)(i) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed therein for the development and maintenance of real property used for wildlife habitat. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

History: En. Sec. 2, Ch. 598, L. 1987; amd. Sec. 11, Ch. 598, L. 1987; amd. Sec. 11, Ch. 636, L. 1987; amd. Sec. 1, Ch. 319, L. 1991; amd. Sec. 5, Ch. 459, L. 1995.

87-1-243 through 87-1-245 reserved.

87-1-246. Funding of upland game bird enhancement program. The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance upland game bird populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $2;
(2) Class B-1, nonresident upland game bird, $23;
(3) Class AAA, sportsman's, $2; and
(4) Class B-10, nonresident big game combination, $23.

History: En. Sec. 1, Ch. 636, L. 1987; amd. Sec. 11, Ch. 636, L. 1987; amd. Sec. 1, Ch. 232, L. 1989.

87-1-247. Authorized use of funds. (1) Not more than 10% of the money generated under 87-1-246 may be used by the department to:

(a) prepare and disseminate information to landowners and organizations concerning the upland game bird enhancement program;

(b) review potential pheasant release sites;

(c) assist applicants in preparing management plans for project areas; and

(d) evaluate the upland game bird enhancement program.

(2) The remainder of the money raised must be used:

(a) to share, at $3 a bird, in the cost of releasing pheasants in suitable habitat, in such numbers and under conditions determined by the department under 87-1-248(1); and

(b) to revert, at the end of each fiscal year, all unexpended funds to the habitat portion of the program outlined in 87-1-248(2) for the development, enhancement, and conservation of upland game bird habitat in Montana.

History: En. Sec. 2, Ch. 636, L. 1987; amd. Sec. 2, Ch. 232, L. 1989.

87-1-248. Qualification of upland game bird enhancement projects. (1) A project eligible for funding under the pheasant release program must contain the proper combination of winter cover, food, nesting cover, and other pheasant habitat components determined necessary by the department to provide for a viable permanent pheasant population.

(2) Habitat enhancement efforts must include assistance to applicants in the establishment of suitable nesting cover, winter cover, and feeding areas through cost-sharing programs, leases, and conservation easements.

(3) No project containing hunting preserves or any commercial hunting enterprise or wherein hunting rights are leased or paid for is eligible for funding.

(4) Preference must be given for project applications submitted by youth organizations, 4-H clubs, sportsmen's groups, and other associations of sufficient size to guarantee completion of all project requirements. However, individual landowners may also apply, so long as the land in the project area remains open to public hunting in accordance with reasonable use limitations imposed by the landowner.

History: En. Sec. 3, Ch. 636, L. 1987; amd. Sec. 3, Ch. 232, L. 1989.

87-1-249. Rules. The department shall adopt rules for the administration of the upland game bird enhancement program created in 87-1-246 through 87-1-249.

History: En. Sec. 4, Ch. 636, L. 1987; amd. Sec. 4, Ch. 232, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

87-1-250. Report. The department shall report to the fish and game committee of each house of the legislature concerning upland game bird enhancement activities undertaken pursuant to 87-1-246 through 87-1-249 during the preceding biennium, together with any recommendations concerning the operation of the program.

History: En. Sec. 9, Ch. 636, L. 1987; amd. Sec. 5, Ch. 232, L. 1989.

87-1-251 through 87-1-254 reserved.

87-1-255. Purpose. The legislature finds that the conservation of rivers and their fisheries is of vital social and economic importance to Montana. The legislature further finds that some of our state's rivers and fisheries are diminished in value by water pollution, water shortages, and riparian erosion and that there is a need for a program to promote the beneficial use and productivity of our river systems. The legislature further finds that establishment of a river restoration program, funded by anglers from across the state and nation, is a sound and proper method to help ensure that the rivers and fisheries that anglers and others have treasured for Montana's first 100 years will continue to serve the state and its people.

History: En. Sec. 1, Ch. 601, L. 1989.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Water resources, Title 85, ch. 1.

87-1-256. Definitions. As used in 87-1-255 through 87-1-259, the following definitions apply:

(1) "Account" means the river restoration account provided for in 87-1-258.

(2) "Associated lands" means the beds, banks, and immediately adjacent lands associated with a river.

(3) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(4) "Program" means the river restoration program provided for in 87-1-257.

(5) "Restoration" means to restore to a good condition, regenerate, or make over in an improved form.

(6) "River" means a river, stream, creek, or other naturally occurring body of flowing water.

History: En. Sec. 2, Ch. 601, L. 1989.

87-1-257. River restoration program. (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to the leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) A project conducted under the program may not restrict or interfere with the exercise of any water right.

History: En. Sec. 3, Ch. 601, L. 1989; amd. Sec. 3, Ch. 175, L. 1993.

Cross-References

Navigable waters, 23-2-301, 85-1-112.

Owner of land bounded by water, 70-16-201.

Adjudication of water rights, Title 85, ch. 2, part 2.

Future fisheries improvement program, 87-1-272, 87-1-273.

Navigable waters subject to fishing rights, 87-2-305.

87-1-258. River restoration account. (1) There is a river restoration special revenue account administered by the department within the state special revenue fund established in 17-2-102.

(2) There must be deposited in the account:

(a) all proceeds earmarked for this account under 87-2-301, 87-2-302, and 87-2-711; and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this account.

(3) The department may spend funds in the account only to carry out the program provided for in 87-1-257.

History: En. Sec. 4, Ch. 601, L. 1989.

87-1-259. Funding for river restoration account. The amount of money specified in this section from the sale of each of the following licenses must be deposited in the account provided for in 87-1-258:

(1) Class A—resident fishing license, 50 cents;

(2) Class B—nonresident fishing license, $1; and

(3) Class AAA—combination sports license, 50 cents.

History: En. Sec. 5, Ch. 601, L. 1989; amd. Sec. 5, Ch. 263, L. 1995.

87-1-260 through 87-1-264 reserved.

87-1-265. *(Temporary)* **Hunter management and hunting access enhancement programs created — private landowner assistance to promote public hunting access — rules.** (1) The department may establish within the block management program established by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303 programs of landowner assistance that encourage public access to private lands for purposes of hunting and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives provided under:

(a) a hunter management program as set out in 87-1-266, consisting of a cooperative agreement between a landowner and the department and including other resource management agencies when appropriate, that allows public hunting with certain restrictions or use rules; and

(b) a hunting access enhancement program as set out in 87-1-267, consisting of incentives for private landowners who allow public hunting access on their lands.

(2) The department may also develop similar efforts outside the scope of the block management program that are designed to promote public access to private lands for hunting purposes.

(3) Participation in a program established under subsection (1) is voluntary. Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for hunting access to private land that is enrolled in the program or who does not provide reasonable public hunting access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners. The department may by rule limit the number of licenses that can be provided as incentives. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

History: En. Sec. 1, Ch. 459, L. 1995.

Cross-References

Entry on private land — policy, 87-1-229.

87-1-266. *(Temporary)* **Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability.** (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the quota of 11,500 established under 87-2-505.

(4) (a) A resident landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(b) A nonresident landowner who chooses to receive a license under subsection (3) may also receive assistance under the block management program, but is not eligible to receive cash payments under 87-1-267.

(5) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

History: En. Sec. 2, Ch. 459, L. 1995.

87-1-267. *(Temporary)* **Hunting access enhancement program — benefits for providing hunting access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability.** (1) As provided in 87-1-265, the department may establish and administer a voluntary program to enhance the block management program, to be known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for public hunting.

(2) Land is not eligible for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the hunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

(a) hunting access management;

(b) services to be provided to the public;

(c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife habitat on public lands outside the block management area, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding game populations and habitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public hunting access. Benefits will be provided to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

(b) wildlife habitat provided;

(c) resident game populations;

(d) number, sex, and species of animals taken; and

(e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner :

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) The commission may provide a total of not more than $8,000 a year to a landowner who participates in the hunter management program or hunting

access enhancement program, or both, subject to the conditions set out in 87-1-266(4).

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

History: En. Sec. 3, Ch. 459, L. 1995.

87-1-268. *(Temporary)* **Variable pricing of outfitter-sponsored Class B-10 and B-11 licenses.** The commission shall annually set fees for outfitter-sponsored Class B-10 and Class B-11 licenses allowed under 87-2-505 and 87-2-510. The fees must be set at a market rate intended to sell as close to but not more than an average of 5,500 Class B-10 licenses and 2,300 Class B-11 licenses each year, calculated over a 5-year period. The sale period for the licenses must be established so that by the last date in the established period, those licenses that are unsold, up to 5,500 Class B-10 licenses and 2,300 Class B-11 licenses, may be reallocated by the commission for a drawing at a price set by the commission. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

History: En. Sec. 6, Ch. 459, L. 1995.

Cross-References

License as benefit for enrolling property in hunter management program, 87-1-266.

87-1-269. *(Temporary)* **Report required — review committee.** (1) The governor shall appoint a committee of persons interested in the hunter management program, the hunting access enhancement program, or other issues related to private lands and public wildlife to review the success and progress of the hunter management program and the hunting access enhancement program. The committee must have equal representation of landowners, outfitters, and sportspersons and be broadly representative of the various geographical areas of the state. The department may provide administrative assistance as necessary to facilitate the efforts of the review committee.

(2) The review committee shall report to the governor regarding the success of the hunter management program and the hunting access enhancement program, including a report of annual landowner participation and the number of acres annually enrolled in the programs. The report may also include suggestions for funding, modification, or improvement of the programs. If the review committee determines that expanding funding for programs for hunter management and hunting access enhancement is desirable, consideration must be given to providing the expanded funding through increases in resident hunting license fees. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

History: En. Sec. 7, Ch. 459, L. 1995.

87-1-270 and 87-1-271 reserved.

87-1-272. *(Temporary)* **Future fisheries improvement program — funding priority — reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) The department shall by April 1, 1996, and thereafter when projects are suggested by the future fisheries review panel, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees. *(Terminates July 1, 2005—sec. 5, Ch. 463, L. 1995.)*

History: En. Sec. 1, Ch. 463, L. 1995; amd. Sec. 5, Ch. 440, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 440 in (5)(a) substituted "report on a state electronic access system" for "report on the state electronic bulletin board".

87-1-273. *(Temporary)* **Future fisheries review panel — purpose — appointment and duties.** (1) The governor or governor's designee shall call for nominees for, accept and review recommendations for, and, by August 1, 1995, appoint a future fisheries review panel. The panel must consist of at least 10 members, including but not limited to:

(a) one member who is a representative of conservation districts;

(b) one member with expertise in commercial agriculture or silviculture;

(c) one member with expertise in irrigated agriculture;

(d) one member from the private sector who is a fisheries restoration professional;

(e) two members who are licensed Montana anglers;

(f) one member of the house of representatives, chosen by the speaker of the house;

(g) one member of the senate, chosen by the committee on committees;

(h) one member who is a representative of the governor's office; and

(i) one member who is a Montana high school student.

(2) A member appointed to the review panel shall serve a 2-year term and may be reappointed.

(3) The purpose of the review panel is to:

(a) review, at least every 6 months, proposed projects that have been submitted by public or private entities for funding;

(b) determine what projects are eligible for inclusion in the future fisheries improvement program;

(c) approve or reject proposed projects; and

(d) forward a list of approved projects to the department.

(4) To be eligible for funding, a project must be generated at the local level and must be developed and presented to the review panel by the department, local landowners, conservation districts, or other interested citizens. Before consideration of any project that involves streambed or streambank restoration, a change in the use of water, or any other purpose that affects a particular property owner's interest in land or water, the review panel is required to find that the project is being proposed for funding with the voluntary approval of the participating property owner. *(Terminates July 1, 2005—sec. 5, Ch. 463, L. 1995.)*

History: En. Sec. 2, Ch. 463, L. 1995.

Part 3

Fish, Wildlife, and Parks Commission

Part Cross-References

Establishment, composition, and qualifications of Commission — quasi-judicial designation, 2-15-3402.

87-1-301. *(Temporary)* **Powers of commission.** (1) The commission shall:

(a) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) establish the hunting, fishing, and trapping rules of the department;

(c) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) have the power within the department to establish wildlife refuges and bird and game preserves;

(e) approve all acquisitions or transfers by the department of interests in land or water;

(f) review and approve the budget of the department prior to its transmittal to the budget office; and

(g) review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property. *(Terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)*

History: En. 26-103.1 by Sec. 16, Ch. 417, L. 1977; R.C.M. 1947, 26-103.1; amd. Sec. 1, Ch. 22, L. 1991; amd. Sec. 1, Ch. 267, L. 1995; amd. Sec. 1, Ch. 355, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 355 inserted (4) allowing the Commission to adopt rules regarding separation and sale of deer licenses from nonresident big game combination licenses. Amendment effective April 22, 1997, and terminates October 1, 2001.

Termination: Section 6, Ch. 355, L. 1997, provided: "[This act] terminates October 1, 2001."

Cross-References

Seasonal rules adopted annually, 2-4-102.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Local government denied powers affecting Title 87, 7-1-111.

State-Tribal Cooperative Agreements Act, Title 18, ch. 11.

Establishment of use rules, 23-1-106, 23-1-202.

Commission to submit to Legislature proposed park, recreational, and historic areas, 23-1-108.

Acquisition, exchange, or sale of lands and waters, 87-1-209, 87-1-701, 87-1-703, 87-1-709, 87-1-711, 87-1-713, 87-1-714.

Hunter management and hunting access enhancement programs, 87-1-265 through 87-1-269.

Fish and wildlife preserves and refuges, 87-1-706, 87-5-401, 87-5-402.

Restrictions on use of archery equipment, 87-3-135.

License and rules for falconry and raptors, 87-5-204.

87-1-302. Commission meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business, at times and places it considers necessary and proper. The meetings shall be called by the chairman or by a majority of the commission and shall be held at the time and place specified in the call for the meeting. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The commission shall keep a record of all the business transacted by it. The chairman and secretary shall sign all orders, minutes, or documents for the commission.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R.C.M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; re-en. Sec. 3652, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973; R.C.M. 1947, 26-103(part).

87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973; amd. Sec. 1, Ch. 332, L. 1975; R.C.M. 1947, 26-104.9; amd. Sec. 486, Ch. 418, L. 1995; amd. Sec. 560, Ch. 546, L. 1995.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Adoption and enforcement of rules, 23-1-106.

Recreational use of streams, Title 23, ch. 2, part 3.

Boating rules, 23-2-523, 23-2-526, 23-2-529.

Navigable waters, 85-1-112.

Adjudication of water rights, Title 85, ch. 2, part 2.

Cooperative agreements over jointly controlled land, 87-1-210.

Hunter management and hunting access enhancement programs, 87-1-265 through 87-1-269.

Navigable waters subject to fishing rights, 87-2-305.

87-1-304. Fixing of seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits;

open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow permit holders and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas. The commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences. It may declare areas open to special license holders only and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom those licenses must be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

History: En. 26-104.3 by Sec. 4, Ch. 511, L. 1973; R.C.M. 1947, 26-104.3; amd. Sec. 1, Ch. 220, L. 1979; amd. Sec. 1, Ch. 313, L. 1983; amd. Sec. 1, Ch. 487, L. 1985; amd. Sec. 1, Ch. 517, L. 1987; amd. Sec. 1, Ch. 589, L. 1993.

Cross-References

Property damage by wild animals — special season, 87-1-225, 87-1-226.

Mourning dove as migratory game bird — season restricted, 87-2-101.

Restriction on number of licenses, 87-1-266, 87-2-104, 87-2-505, 87-2-506, 87-2-701.

Wild turkey tags and fees, 87-2-403.

Closure of hunting and fishing areas, 87-3-106, 87-5-402.

Violation of closed season on certain game birds, 87-3-402.

Migratory game birds — bag limits, 87-3-403.

Grizzly bear seasons, 87-5-302.

Creation and posting of districts, 87-5-402.

87-1-305. Fish and game refuges. (1) The commission may establish and close to hunting, trapping, or fishing any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than 15 days after first publication, at which time and place all interested parties may appear and be heard.

History: En. 26-104.8 by Sec. 9, Ch. 511, L. 1973; R.C.M. 1947, 26-104.8.

Cross-References

State-federal relationships and wildlife projects, Title 87, ch. 1, part 7.

Game preserves and closed areas, Title 87, ch. 5, part 4.

Part 4
Director of Fish, Wildlife, and Parks

87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and shall adopt rules authorized by law to implement those policies.

History: En. 26-106.3 by Sec. 17, Ch. 417, L. 1977; R.C.M. 1947, 26-106.3.

Cross-References

Appointment of Director, Art. VI, sec. 8, Mont. Const.; 2-15-3401.

Reports to Governor, Art. VI, sec. 15, Mont. Const.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Member of Water Pollution Control Advisory Council, 2-15-2107.

87-1-402. Oath of director. Before entering upon his official duties, the director shall take and subscribe the constitutional oath of office and shall in addition thereto swear or affirm that he holds no other position or office or any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

History: En. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R.C.M. 1921; re-en. Sec. 3660, R.C.M. 1935; amd. Sec. 14, Ch. 177, L. 1965; R.C.M. 1947, 26-111(part).

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

87-1-403. Regulation of employees by director. (1) The director may suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the department on the charges filed. The action of the department resulting from such a hearing constitutes final administrative action for purposes of filing a grievance with the board of personnel appeals as provided in 87-1-205.

(2) The director shall rate all employees on the basis of merit and efficiency in accordance with rules adopted by the department to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, shall be allowed employees while upon official business away from designated headquarters.

History: En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 4, Ch. 453, L. 1977; R.C.M. 1947, 26-108; amd. Sec. 4, Ch. 44, L. 1979.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

State employee grievance procedures, Title 2, ch. 18, part 10.

Peace officer employment, education, and certification standards, 7-32-303.

Grievance procedure, 87-1-205.

Travel expenses, 87-1-503, 87-1-602.

Salaries, 87-1-601, 87-1-602.

87-1-404. Appointment of deputy director and wardens. The director shall have the power to employ and appoint a deputy director and a sufficient number of wardens for the proper enforcement of the fish and game laws of the state and the orders, rules, and regulations of the department and for such other purposes as the director may designate.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R.C.M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; re-en. Sec. 3656, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977; R.C.M. 1947, 26-107(part).

Cross-References

Enforcement of fish and game laws, 87-1-201.

Wardens — generally, Title 87, ch. 1, part 5.

87-1-405. Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the director in cooperation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of the compilation and properly index them. Copies of the compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. The director shall distribute to justices of the peace, wardens, and other officers and persons empowered to issue licenses for hunting, fishing, and trapping a supply of the compilation sufficient to permit one copy to be given anyone desiring a copy.

The expense incurred in printing the laws shall be paid out of fish and game moneys in the state special revenue fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R.C.M. 1921; re-en. Sec. 3674, R.C.M. 1935; amd. Sec. 20, Ch. 511, L. 1973; R.C.M. 1947, 26-125; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Publication of MCA, Title 1, ch. 11, part 3.

Dissemination of laws and proceedings, Title 5, ch. 11, part 2.

Part 5
Fish and Game Wardens

87-1-501. Selection and oath of wardens. (1) Wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the department. No person shall be appointed a warden until a certificate shall have been issued to him by the department to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office.

(2) Before entering upon their official duties, state fish and game wardens shall take and subscribe the constitutional oath of office and shall in addition thereto swear or affirm that they hold no other position or office or any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

History: Ap. p. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R.C.M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; re-en. Sec. 3656, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977; Sec. 26-107, R.C.M. 1947; Ap. p. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R.C.M. 1921; re-en. Sec. 3660, R.C.M. 1935; amd. Sec. 14, Ch. 177, L. 1965; Sec. 26-111, R.C.M. 1947; R.C.M. 1947, 26-107(part), 26-111(part).

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Peace officer employment, education, and certification standards, 7-32-303.

Game wardens' and peace officers' retirement, Title 19, ch. 8.

87-1-502. Qualifications, powers, and duties. (1) Wardens must be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish and that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing, have the necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist

in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports must contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection.

(7) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this title and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur.

History: En. Sec. 10, Ch. 193, L. 1921; re-en. Sec. 3659, R.C.M. 1921; amd. Sec. 5, Ch. 192, L. 1925; amd. Sec. 12, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-110; amd. Sec. 8, Ch. 609, L. 1991; amd. Sec. 11, Ch. 662, L. 1991.

Cross-References

Seizure and impoundment of dogs running at large, 7-23-102.

Peace officer employment, education, and certification standards, 7-32-303.

Enforcement of park and outdoor recreation laws, 23-1-122.

Enforcement of boating laws, 23-2-506.

Duty to investigate boat accidents, 23-2-527.

Enforcement of snowmobile laws, 23-2-641.

Enforcement of off-highway vehicle laws, 23-2-806.

Enforcement of laws regarding outfitters and guides, 37-47-345.

Interstate Law Enforcement Mutual Aid Act, Title 44, ch. 11, part 3.

Definition of enter or remain unlawfully, 45-6-201.

Criminal trespass to property, 45-6-203.

Enforcement of prohibition against dumping dead animals, 75-10-233.

Litter control, 75-10-233.

Enforcement of laws regarding recreational use of state lands, 77-1-801.

Duties of firewardens, 77-5-104.

Enforcement of fish and game laws, 87-1-201.

Checking stations, 87-1-207, 87-1-208.

Appointment of wardens, 87-1-404.

Interstate Wildlife Violator Compact, Title 87, ch. 1, part 8.

87-1-503. Ex officio wardens. All sheriffs and their deputies; all constables; all peace officers of the state or any subdivision of the state; the executive director and investigators of the board of outfitters; all state forest officers; as authorized by cooperative agreement, any officers of the United States forest service, agents of the United States fish and wildlife service, and peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state; former fish and game wardens; and field personnel of the department as the director may appoint are ex officio wardens, without pay, except that the department may, in its discretion, allow travel expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R.C.M. 1921; re-en. Sec. 3663, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1955; amd. Sec. 1, Ch. 236, L. 1965; amd. Sec. 13, Ch. 439, L. 1975; amd. Sec. 6, Ch. 417, L. 1977; R.C.M. 1947, 26-114; amd. Sec. 12, Ch. 662, L. 1991; amd. Sec. 1, Ch. 187, L. 1993; amd. Sec. 21, Ch. 328, L. 1995; amd. Sec. 3, Ch. 417, L. 1995.

87-1-504. Protection of private property — duty of wardens. It is the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), 77-1-801, 77-1-806, and rules adopted under 77-1-804 on private and state lands being used for hunting and fishing and to act as ex officio firewardens as provided by 77-5-104.

History: En. Sec. 1, Ch. 85, L. 1969; amd. Sec. 35, Ch. 513, L. 1973; R.C.M. 1947, 26-110.1; amd. Sec. 2, Ch. 599, L. 1985; amd. Sec. 9, Ch. 609, L. 1991; amd. Sec. 83, Ch. 10, L. 1993.

Cross-References

Damage to private property on Department land, 23-1-106.

Definition of enter or remain unlawfully, 45-6-201.

Entry on private land — policy, 87-1-229.

87-1-505. Warden's power in protection of private property. Wardens (state conservation officers) shall have the power of peace officers in the enforcement of 45-6-101, 45-6-203, and 75-10-212(2).

History: En. Sec. 2, Ch. 85, L. 1969; amd. Sec. 36, Ch. 513, L. 1973; R.C.M. 1947, 26-110.2.

Cross-References

Damage to private property on Department land, 23-1-106.

87-1-506. Enforcement powers of wardens. (1) A warden may:

(a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(b) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

(c) search, with a search warrant, any dwelling house or other building;

(d) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;

(e) seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(f) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

(g) enforce the disorderly conduct and public nuisance laws,45-8-101 and 45-8-111, as they apply to the operation of motorboats on all waters of the state;

(h) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state; and

(i) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

(2) The meat of game animals that are seized pursuant to subsection (1)(d) must be donated directly to the Montana food bank network, or to public or charitable institutions, to the extent reasonably feasible. Any meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2).

History: En. 26-110.3 by Sec. 13, Ch. 511, L. 1973; amd. Sec. 1, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-110.3; amd. Sec. 1, Ch. 694, L. 1983; amd. Sec. 1, Ch. 336, L. 1991; amd. Sec. 3, Ch. 523, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 523 inserted (2) requiring donation of seized game animals to the food bank network or to public or charitable institutions; and made minor changes in style.

Cross-References

Searches and seizures, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

Motorboat noise limitation — violation as disorderly conduct and public nuisance, 23-2-526.

Enforcement of laws regarding outfitters and guides, 37-47-345.

Entry on private land — policy, 87-1-229.

Appointment of wardens, 87-1-404.

87-1-507 through 87-1-510 reserved.

87-1-511. Sale of confiscated birds and animals — disposition of seized grizzly bears. (1) Except as provided in 87-1-226(1), all birds, animals, fish, heads, hides, teeth, or other parts of any animal other than grizzly bear seized by any officer or warden or otherwise acquired by a department employee in the scope of his employment may be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions which in the discretion of the officers seem conducive to securing full value.

(2) All grizzly bears or heads, hides, teeth, claws, or other parts of grizzly bears seized by any officer or warden may be donated to museums, educational institutions, government agencies, or persons conducting scientific studies, as approved by the commission. If approved under federal law, parts may be sold at public auction if, after approval by the commission, a reasonable attempt has been made to dispose of the parts.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R.C.M. 1921; re-en. Sec. 3726, R.C.M. 1935; amd. Sec. 35, Ch. 511, L. 1973; R.C.M. 1947, 26-506; amd. Sec. 2, Ch. 120, L. 1985; amd. Sec. 1, Ch. 540, L. 1985.

Cross-References

Waste of fish or game, 87-3-102.

87-1-512. Certificate of sale. (1) Upon the sale of property as provided in 87-1-511, the officer shall issue a certificate to the purchasing party, certifying that the purchaser has the legal right to be in possession of the property and that anyone so acquiring this property from the state is prohibited from reselling the property for human consumption.

(2) Only one carcass of either deer, moose, or elk may be purchased per person at an auction conducted pursuant to 87-1-511. At its discretion, the department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions.

(3) Subsection (1) does not prohibit the resale of heads, hides, pelts, or mounts.

History: En. Sec. 48, Ch. 173, L. 1917; re-en. Sec. 3727, R.C.M. 1921; amd. Sec. 27, Ch. 192, L. 1925; re-en. Sec. 3727, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1975; amd. Sec. 12, Ch. 9, L. 1977; R.C.M. 1947, 26-507; amd. Sec. 1, Ch. 108, L. 1989.

Cross-References

Meat donated to public entities, 87-1-226.

87-1-513. Disposition of proceeds of sale. (1) The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with violation of the law is found guilty of or forfeits bond for violation of the fish and game laws of the state, the money received for the sale of seized property must be paid over to the state treasurer and be deposited to the credit of the fish and game fund, except as provided in subsection (2). If the party from whom the property was taken is not found guilty of any violation of the fish and game laws of this state, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage on account of any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds, or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services and are statutorily appropriated, as provided in 17-7-502, to the department of public health and human services for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network.

History: En. Sec. 49, Ch. 173, L. 1917; re-en. Sec. 3728, R.C.M. 1921; re-en. Sec. 3728, R.C.M. 1935; R.C.M. 1947, 26-508; amd. Sec. 3, Ch. 120, L. 1985; amd. Sec. 1, Ch. 170, L. 1993; amd. Sec. 4, Ch. 523, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 523 in (1), at end of second sentence, inserted "except as provided in subsection (2)"; and inserted (2) regarding deposit of proceeds from the sale of seized game animal meat.

Cross-References

Use of fish and game money, 87-1-201, 87-1-601.

87-1-514. Record of confiscated property. The director and wardens shall keep a complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received for it upon public sale, and the disposition of the money.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R.C.M. 1921; re-en. Sec. 3729, R.C.M. 1935; amd. Sec. 36, Ch. 511, L. 1973; R.C.M. 1947, 26-509.

Part 6

Finance

87-1-601. Use of fish and game money. (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution

must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; from exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of natural resources and conservation in the management of state lands.

(8) After July 1, 1995, the state treasurer shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R.C.M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945; amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-121; amd. Sec. 2, Ch. 640, L. 1979; amd. Sec. 1, Ch. 388, L. 1981; amd. Sec. 45, Ch. 281, L. 1983; amd. Sec. 62, Ch. 557, L. 1987; amd. Sec. 1, Ch. 41, L. 1991; amd. Sec. 3, Ch. 339, L. 1991; amd. Sec. 10, Ch. 609, L. 1991; amd. Sec. 4, Ch. 417, L. 1995; amd. Sec. 487, Ch. 418, L. 1995.

Cross-References

Sum to be paid into game wardens' and peace officers' retirement account — state contribution, 19-8-504.

Disposition of fees, 37-47-306, 87-1-201, 87-1-701, 87-1-708, 87-1-710, 87-2-204, 87-4-602.

Payment of prosecution cost bills, 87-1-104.

Disposition of restitution proceeds, 87-1-114.

Payment of employee salaries, 87-1-403.

Disposition of proceeds of sale of seized property, 87-1-513.

Disposition of proceeds from sale of paddlefish roe, 87-4-601.

Disposition of fines, bonds, fees, and penalties, 87-4-808.

87-1-602. Payment of salaries, per diem, and expenses. All salaries, per diem, expenses, and claims incurred by the department or a person appointed or employed by it shall be paid out of fish and game moneys in the general fund, the federal special revenue fund, the state special revenue fund, or other applicable fund upon warrants properly drawn on those funds.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R.C.M. 1921; re-en. Sec. 3672, R.C.M. 1935; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-123; amd. Sec. 1, Ch. 48, L. 1979; amd. Sec. 46, Ch. 281, L. 1983.

Cross-References

Travel expenses, 2-18-501 through 2-18-503, 87-1-403, 87-1-503.

State's contribution to game wardens' and peace officers' retirement account, 19-8-504.

87-1-603. Payments to counties for department-owned land — exceptions. Before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this section. If the director disapproves a request, the director shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. A payment may not be made to a county in which the department owns less than 100 acres. A payment may not be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-133; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 486, L. 1987; amd. Sec. 34, Ch. 325, L. 1995.

87-1-604. Authorization for allocation of funds to school districts. The county commissioners of any county receiving funds as provided in 87-1-603 may allocate, in such amounts as they determine, any portion of the funds to any school district in the county whenever the school district contains any department lands. Any balance remaining after allocations have been made to school districts shall be credited to the general fund of the county.

History: En. Sec. 2, Ch. 1, L. 1951; amd. Sec. 3, Ch. 9, L. 1977; R.C.M. 1947, 26-134.

Cross-References

Computation of general fund net levy requirement by County Superintendent, 20-9-141.

87-1-605. *(Temporary)* **Fees used to purchase recreational facilities.** (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, $1 of the fee for a Class B-4 nonresident fishing license, and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation and maintenance must equal at least 50% of the money set aside each year under this section and must be

expended as provided in subsection (3). The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

(3) Operation and maintenance money set aside each year under this section must be expended based on the following priority:

(a) weed management;

(b) streambank restoration; and

(c) general operation and maintenance. *(Terminates July 1, 1999—sec. 4, Ch. 428, L. 1995.)*

87-1-605. *(Effective July 1, 1999)* **Fees used to purchase recreational facilities.** (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, $1 of the fee for a Class B-4 nonresident fishing license, and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the money set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

History: En. Sec. 3, Ch. 408, L. 1973; amd. Sec. 1, Ch. 82, L. 1977; R.C.M. 1947, 26-234; amd. Sec. 1, Ch. 461, L. 1981; amd. Sec. 6, Ch. 239, L. 1983; amd. Sec. 72, Ch. 18, L. 1995; amd. Sec. 1, Ch. 428, L. 1995; amd. Sec. 2, Ch. 336, L. 1997.

Compiler's Comments

1997 Amendment: (Both versions) Chapter 336 near beginning of (1) inserted "10% of the fee for a Class A-8 resident temporary fishing license".

Cross-References

Acquisition of recreational areas, 23-2-103.

Disposition of fees, 87-1-201, 87-1-701, 87-1-708, 87-1-710, 87-2-204, 87-4-602.

87-1-606. Fee limitation for multiple licenses. If a person is issued more than one license under part 4, 9, or 10 of chapter 4 of this title, the total assessment for initial fees or for renewal fees for all licenses issued to such person may not exceed the amount of the largest individual license fee.

History: En. Sec. 49, Ch. 570, L. 1983.

87-1-607 through 87-1-609 reserved.

87-1-610. *(Temporary)* **Contributions for leasing appropriation rights — general spending authority.** (1) The department may accept contributions from public or private entities for the purpose of leasing appropriation rights to maintain or enhance instream flows for the benefit of fisheries.

(a) Any contributions accepted by the department under this section must be deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

(b) The department shall expend money obtained under this section and deposited in the fish and wildlife mitigation trust fund exclusively to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries.

(2) The department may also expend other departmental funds to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries, including but not limited to departmental funds in the river restoration special revenue account established under 87-1-258. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

History: En. Sec. 5, Ch. 658, L. 1989; amd. Sec. 4, Ch. 175, L. 1993.

Cross-References

Water leasing study, 85-2-436.

Department of Natural Resources and Conservation designation of stream reaches eligible for leasing, 85-2-437.

87-1-611. Fish and wildlife mitigation trust fund created. (1) There is established, separate and apart from all public money or funds of this state, a fund to be known as the fish and wildlife mitigation trust fund. The fund must be administered by the department.

(2) The fund consists of:

(a) money received under written agreements, contracts, or authorizations with the department made for the purpose of fish and wildlife mitigation or enhancement;

(b) any gift, donation, grant, legacy, bequest, or devise made for the purpose of fish and wildlife mitigation or enhancement;

(c) any interest, earnings, or income of the fund; and

(d) any property or easements acquired through the expenditure of money from the fund.

History: En. Sec. 1, Ch. 445, L. 1987.

Cross-References

Fund structure, 17-2-102.

87-1-612. Purposes of the fish and wildlife mitigation trust fund. Expenditures may be made from the fish and wildlife mitigation trust fund for fish and wildlife mitigation or enhancement purposes pursuant to the written agreement, contract, authorization, or terms of a gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund. The specific purposes are those designated in the written agreement, contract, authorization, or terms.

History: En. Sec. 2, Ch. 445, L. 1987.

87-1-613. Agreements for use of fund — department as trustee. (1) The department may enter into agreements with persons or entities committing money to the fish and wildlife mitigation trust fund concerning the purpose and manner of use of the money from the fish and wildlife mitigation trust fund.

(2) The department is the trustee of the fish and wildlife mitigation trust fund and is responsible for its administration and use.

History: En. Sec. 3, Ch. 445, L. 1987.

Cross-References

General powers of trustee, 72-34-301.

87-1-614. Expenditure of principal and earnings. The principal and interest, earnings, or income of the fish and wildlife mitigation trust fund shall be expended or retained according to the written agreement, contract, authorization, or terms of the gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund.

History: En. Sec. 4, Ch. 445, L. 1987.

87-1-615. Investment of fish and wildlife mitigation trust fund. The fish and wildlife mitigation trust fund must be invested and managed by the board of investments as part of the unified investment program in a separate investment fund.

History: En. Sec. 5, Ch. 445, L. 1987.

Cross-References

Unified investment program, Art. VIII, sec. 13, Mont. Const.; Title 17, ch. 6, part 2.

Part 7
State-Federal Relationships

Part Cross-References

Consent to purchase lands for migratory bird reservations — jurisdiction, 2-1-211.

Disposition of fees, 87-1-201, 87-1-601, 87-1-605, 87-2-204, 87-4-602.

Acquisition of lands or waters by Department, 87-1-209.

Power of Commission to establish wildlife refuges, 87-1-301.

Fish and game refuges, 87-1-305.

87-1-701. Assent to Dingell-Johnson bill. The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681, 81st congress, chapter 658, 2nd session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as hereinafter provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish, wildlife, and parks department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient", and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not be returned to the state of Montana except the state of Montana does assent to this act; now, therefore, the state of Montana does assent to the provisions of said act of congress which is commonly known as the Dingell-Johnson bill, but such assent is with the express reservations enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent herein given, surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, nor shall 87-1-701 through 87-1-703 in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed thereon shall be and remain in the state

History: En. Sec. 1, Ch. 140, L. 1951; R.C.M. 1947, 26-1401; amd. Sec. 2, Ch. 218, L. 1979.

87-1-702. Powers of department relating to fish restoration and management. The department is hereby authorized to perform such acts as may be necessary to the establishment and conduct of fish restoration and management projects as defined and authorized by the act of congress, provided every project initiated under the provisions of the act shall be under the supervision of the department, and no laws or rules or regulations shall be passed, made, or established relating to said fish restoration and management projects except they be in conformity with the laws of the state of Montana or rules promulgated by the department, and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, there remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the fish restoration and management projects created or established shall wholly and permanently belong to the state of Montana, except as hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1402.

Cross-References

State Lands, Title 77.

87-1-703. Cooperative agreements on federally owned land. The department, in the name of the state and with the approval of the governor, shall have the power to enter into cooperative agreements on federally owned lands with the government of the United States or any department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any fish restoration projects created and established under the provisions of 87-1-701 through 87-1-703 and shall have the power to acquire by purchase, either by cash or upon installments, or lease or by gift or by devise or individually or in conjunction with the government of the United States or some department or bureau thereof such lands or other property or interest therein as may be necessary for the purpose of carrying on any fish restoration and management projects created and established under the provisions of said Dingell-Johnson bill of the congress of the United States, and the state does reserve to itself, acting through its legislature, the right to direct the department to abandon any fish restoration and management projects created and established as the state may in its judgment think proper. The department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-701 through 87-1-703.

History: En. Sec. 3, Ch. 140, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1403; amd. Sec. 5, Ch. 44, L. 1979.

87-1-704. Federal fish-hatching operations. The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents may conduct fish-hatching and all operations connected therewith (in any manner and at any time that may be considered necessary and proper by them) at any United States fish cultural station that may be established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913; re-en. Sec. 3712, R.C.M. 1921; re-en. Sec. 3712, R.C.M. 1935; amd. Sec. 11, Ch. 9, L. 1977; R.C.M. 1947, 26-330.

87-1-705. Acquisition of land by United States for migratory bird reservation. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in sections 31 and 32 in township 28 north of range 22 west; sections 4, 5, 8, 9, 16, 17, 18, 19, and 20 in township 27 north of range 22 west; sections 13, 14, 15, 16, 21, 22, 23, and 24 in township 27 north of range 23 west, in Flathead County, Montana, as the United States may deem necessary for the establishment of a migratory bird reservation in accordance with the act of congress approved February 18, 1929, entitled: "An Act to More Effectively Meet the Obligations of the United States Under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of Such Birds; and Authorizing Appropriations for the Establishment of Such Areas, Their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 156, L. 1941; R.C.M. 1947, 26-1108.

87-1-706. Regulation of bird reserve in Flathead County. Upon the acquisition or establishment of any such refuge in Flathead County, state of Montana, the commission, acting under its authority to designate areas as resting, feeding, and breeding grounds for migratory and other species of birds and wild animals, shall in its discretion establish such areas as a state refuge and adopt such regulations not inconsistent with the regulations of the secretary of the United States department of agriculture governing such areas as it may deem necessary for their protection and may enter into cooperative agreements or arrangements with the secretary for the enforcement of the aforesaid act of congress and the regulations of the secretary of agriculture and for the maintenance and administration of such refuge.

History: En. Sec. 2, Ch. 156, L. 1941; R.C.M. 1947, 26-1109.

Cross-References

Game preserves and closed areas, Title 87, ch. 5, part 4.

87-1-707. Water supply for the Benton Lake wildlife refuge. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of a canal right-of-way approximately 66 feet in width, together with an area not to exceed 10 acres as a site for a pumping station works, or of land and water within township 22 north, range 1 west; township 23 north, range 2 west; township 23 north, range 1 west; township 23 north, range 1 east; township 23 north, range 2 east, Teton County; township

22 north, range 1 east, Cascade County; and township 23 north, range 3 east, Chouteau County for the transportation of a supplemental water supply for the Benton Lake national wildlife refuge, Cascade County, established by Executive Order No. 5228, November 21, 1929, and as amended by Executive Order No. 2416, July 25, 1940, in accordance with the act of congress approved February 18, 1929, entitled: "An Act to More Effectively Meet the Obligations of the United States Under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of Such Birds; and Authorizing Appropriations for the Establishment of Such Areas, Their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 227, L. 1953; R.C.M. 1947, 26-1108.1.

Cross-References

Interference with canal or ditch easements prohibited, 70-17-112.

87-1-708. Assent to Pittman-Robertson Act — authority of department. (1) The congress of the United States having passed an act which was approved on September 2, 1937, and which is known as 50 Federal Statutes 917 of the acts of congress, wherein it is, among other things, provided that "no money apportioned under this chapter to any state shall be expended therein until its legislature or other state agency authorized by the state constitution to make laws governing the conservation of wildlife shall have assented to the provisions of this chapter and shall have passed laws for the conservation of wildlife, which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said department", and since the moneys referred to in the act of congress are collected in part from the hunters of this state and will not be returned to the state of Montana except the state of Montana does assent to the act, now, therefore, the state of Montana does assent to the provisions of said act of congress which is commonly known as the Pittman-Robertson bill, but such assent is with the express reservations enumerated in this section, 87-1-709, and 87-1-710. The state of Montana does not by the passage of these sections or by the consent herein given surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, nor shall this section, 87-1-709, and 87-1-710 in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. Provided, however, that nothing herein shall be construed as giving consent to the purchase or acquisition of lands by the United States or by any of its departments or officers for establishing migratory bird sanctuaries under the Migratory Bird Conservation Act of the United States or otherwise and that the title to all lands acquired under the provisions of this section, 87-1-709, and

87-1-710 for wildlife projects and projects constructed thereon shall be and remain in the state of Montana.

(2) The department is hereby authorized to perform such acts as may be necessary to the establishment and conduct of wildlife projects as defined and authorized by said act of congress, provided every project initiated under the provisions of this section, 87-1-709, and 87-1-710 shall be under the supervision of the department, and no laws or rules or regulations shall be passed, made, or established governing the game or fur-bearing animals or the taking or capturing of the same in any such projects except they be in conformity with the laws of the state of Montana or rules promulgated by the department. The title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, and remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the projects created or established shall wholly and permanently belong to the state of Montana, except as provided in 87-1-709. Nothing contained herein shall prevent the department from entering into cooperative agreements on federally owned lands as provided for herein.

History: (1)En. Sec. 1, Ch. 167, L. 1941; Sec. 26-1122, R.C.M. 1947; (2)En. Sec. 2, Ch. 167, L. 1941; amd. Sec. 1, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1123, R.C.M. 1947; R.C.M. 1947, 26-1122, 26-1123.

87-1-709. Cooperation with United States for wildlife restoration. The department, in the name of the state and with the approval of the governor, shall have the power to enter into the cooperative agreements on federally owned lands with the government of the United States or some department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the congress of the United States and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson Act of the congress of the United States. The state of Montana does reserve to itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided the department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-708 through 87-1-710.

History: En. Sec. 3, Ch. 167, L. 1941; amd. Sec. 2, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1124.

87-1-710. Use of hunters' license fees for department purposes only. In accordance with the other requirement of said act of congress, it shall be the law of this state, so long as this assent shall be unrepealed, that no license fees paid by hunters in the state of Montana shall be used or taken for any other purpose than the administration and use of the department.

History: En. Sec. 4, Ch. 167, L. 1941; R.C.M. 1947, 26-1125.

87-1-711. Acquisition of land by United States for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in section 31, township 18 north, range 20 west, Lake County, Montana, and section 36, township 18 north, range 21 west, Sanders County, Montana, excepting the Northern Pacific railway and state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big game animals, reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of applicable federal regulations.

History: En. Sec. 1, Ch. 209, L. 1953; R.C.M. 1947, 26-1126.

87-1-712. Development of national bison range. Upon the acquisition or establishment of any such park in Lake County and Sanders County, the fish and wildlife service, United States department of the interior, agrees to develop, improve, and maintain the park for the display of such native big game animals as are available on the national bison range.

History: En. Sec. 2, Ch. 209, L. 1953; R.C.M. 1947, 26-1127.

87-1-713. Federal waterfowl and wildlife area acquisitions — submission to affected county governing bodies for review. The governor, the department, or their agents, responsible under federal law for final approval of land, wetland, and water acquisitions in fee by the United States government or its agents for waterfowl protection areas or wildlife refuges, or the United States fish and wildlife service shall submit the proposed acquisitions to the governing body of each county in which all or part of the land, wetland, and water areas are proposed to be located for the governing body's recommendations.

History: En. Sec. 1, Ch. 309, L. 1979.

Cross-References

Consent to purchase lands for migratory bird reservations, 2-1-211.

87-1-714. Hearings on proposed waterfowl and wildlife area acquisitions. (1) The governing body of the county affected by a proposed federal acquisition of land under 87-1-713, the department, and the United States fish and wildlife service shall, within 21 days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas, if the governing body deems such inspection appropriate.

(2) If requested by the governing body, the agencies described in subsection (1) shall hold a joint public hearing on the proposed acquisition and shall give public notice of the date, time, and place of the hearing. The hearing shall be held in the county in which the proposed acquisition is located. The hearing shall be held within 30 days of the governing body's receipt of the acquisition proposal. The notice shall be published once a week for 2 successive weeks in a newspaper of general circulation in each county in which all or part of the proposed acquisition is located. The notice shall include the substance of the proposed action and a legal description of the proposed acquisitions.

History: En. Sec. 2, Ch. 309, L. 1979.

Part 8
Interstate Wildlife Violator Compact

Part Cross-References

Interstate fishing privileges, Title 87, ch. 2, part 10.

87-1-801. Compact adopted — text. The Interstate Wildlife Violator Compact is entered into by this state, with all other states legally joining therein, in the form substantially as follows:

INTERSTATE WILDLIFE VIOLATOR COMPACT
ARTICLE I
Findings, Declaration of Policy, and Purpose

(1) The participating states find that the following provisions apply:

(a) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, ordinances, regulations, and administrative rules relating to the management of such resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances, regulations, and administrative rules of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(e) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(g) In most instances, a person who is cited for a wildlife violation in a state other than that person's own state:

(i) is required to post collateral or a bond to secure appearance for a trial at a later date;

(ii) is taken into custody until the collateral or bond is posted; or

(iii) is taken directly to court for an immediate appearance.

(h) The purpose of the enforcement practices set forth in subsection (1)(g) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to proceed after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(i) In most instances, a person receiving a wildlife citation in that person's home state is permitted to accept the citation from the officer at the scene of the violation and immediately proceed after agreeing or being instructed to comply with the terms of the citation.

(j) The practices described in subsection (1)(g) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine and is thus compelled to remain in custody until some alternative arrangement is made.

(k) The enforcement practices described in subsection (1)(g) of this article consume an undue amount of law enforcement time.

(2) It is the policy of the participating states to:

(a) promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states;

(b) recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state;

(c) allow a violator, except as provided in subsection (2) of Article III, to accept a wildlife citation and proceed without delay, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact;

(d) report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state;

(e) allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they occurred in the home state;

(f) extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state;

(g) maximize effective use of law enforcement personnel and information;

(h) assist court systems in the efficient disposition of wildlife violations.

(3) The purpose of this compact is to:

(a) provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection (2) of this article in a uniform and orderly manner;

(b) provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II
Definitions

As used in this compact and 87-1-802 through 87-1-805, unless the context requires otherwise, the following definitions apply:

(1) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(4) "Conviction" means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by state statute, law, regulation, ordinance, or administrative rule. Such conviction shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

(9) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(12) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated in the citation.

(15) "Wildlife" means all species of animals including but not limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state, and determination of whether a species is "wildlife" for purposes of this compact shall be based on state or local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(17) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III
Procedures for Issuing State

(1) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in subsection (2) of this article, if the officer receives the recognizance of such person that the person will comply with the terms of the citation.

(2) Personal recognizance is acceptable:

(a) if not prohibited by state or local law or the compact manual; and

(b) if the violator provides adequate proof of identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance pursuant to subsection (3) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE IV
Procedure for Home State

(1) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V
Reciprocal Recognition of Suspension

(1) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation

resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(2) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE VI
Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII
Compact Administrator — Procedures

(1) For the purposes of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states, to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state the compact administrator represents. A compact administrator may provide for the discharge of duties and the performance of functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of the identity of the alternate has been given to the board.

(2) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(3) The board shall elect annually from its membership a presiding officer and a vice presiding officer.

(4) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(5) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and receive, utilize, and dispose of same.

(6) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private nonprofit organization or institution.

(7) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact.

All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII
Entry Into Compact and Withdrawal

(1) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.

(2) (a) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the presiding officer of the board.

(b) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(i) a citation of the authority from which the state is empowered to become a party to this compact;

(ii) an agreement of compliance with the terms and provisions of this compact; and

(iii) an agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(c) The effective date of entry shall be specified by the applying state but shall not be less than 60 days after notice has been given:

(i) by the presiding officer of the board of the compact administrators; or

(ii) by the secretariat of the board to each participating state that the resolution from the applying state has been received.

(3) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX
Amendments to the Compact

(1) This compact may be amended from time to time. Amendments shall be presented in resolution form to the presiding officer of the board of the compact administrators and shall be initiated by one or more participating states.

(2) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(3) Failure of a participating state to respond to the compact presiding officer within 120 days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X
Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

History: **En. Sec. 1, Ch. 122, L. 1995.**

87-1-802. Department authorization to effect purposes of compact. (1) The department shall enforce the Interstate Wildlife Violator Compact and shall do all things within the department's jurisdiction that are appropriate in order to effectuate the purposes and the intent of the compact.

(2) The department is authorized on behalf of the state of Montana to enter into or withdraw from the Interstate Wildlife Violator Compact pursuant to the terms of Article VIII of the compact.

(3) The department is authorized to adopt amendments to the Interstate Wildlife Violator Compact pursuant to the terms of Article IX of the compact.

History: **En. Sec. 2, Ch. 122, L. 1995.**

87-1-803. Reciprocal recognition of license suspensions — suspension of privileges for conviction in participating state. (1) When the department receives notice of the suspension of a person's hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading to the suspension could have led to the forfeiture of privileges under Montana law. If the department determines that the person's privileges could have been forfeited, the department shall suspend the person's privileges to hunt, trap, or fish in Montana for the same period as imposed by the participating state or for the minimum period that would have been imposed under Montana law, whichever period is longer.

(2) When the department receives notice of a conviction of a Montana resident from the licensing authority of the issuing state, the department shall treat the conviction as if it had occurred in Montana and shall determine whether the conviction could have led to the forfeiture of the resident's hunting, trapping, or fishing privileges under Montana law. If the department determines that the resident's privileges could have been forfeited, the department shall suspend the resident's privileges to hunt, trap, or fish in Montana for the minimum period that would have been imposed under Montana law.

(3) Notice of the suspension must be sent to the person, who shall surrender any current Montana hunting, trapping, and fishing licenses to the department within 10 days.

(4) A person whose privileges have been suspended and who hunts, traps, or fishes in Montana, who applies for or purchases any licenses or permits to hunt, trap, or fish in Montana, or who refuses to surrender any current hunting, trapping, and fishing licenses as required, is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(3).

History: **En. Sec. 3, Ch. 122, L. 1995.**

Cross-References

Penalties, 87-1-102.

Suspension of privileges for failure to comply with citation or sentence, 87-1-108.

Restitution for illegal killing or possession of certain wildlife, 87-1-111.

87-1-804. Suspension of privileges for failure to comply with citation issued in participating state. (1) The department shall suspend the hunting, trapping, or fishing privileges of any resident of Montana upon notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.

(2) Notice of the suspension must be sent to the resident, who shall surrender all current Montana hunting, trapping, and fishing licenses to the department within 10 days.

(3) A person who hunts, traps, or fishes, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, trapping, or fishing license in violation of this section is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(3).

History: En. Sec. 4, Ch. 122, L. 1995.

87-1-805. Hearing on suspension. (1) Upon suspending the hunting, trapping, or fishing privileges of any person under 87-1-803 or 87-1-804, the department shall immediately notify the person in writing. The person may, within 20 days of the notice, request a hearing before the department on whether the requirements for suspension have been met. The hearing must be informal.

(2) Upon request, the department shall set a hearing as early as practicable.

(3)(a) The requesting person may present evidence and arguments at the hearing contesting whether:

(i) a participating state suspended the person's privileges;

(ii) there was a conviction in the participating state;

(iii) the person failed to comply with the terms of a citation issued for a wildlife violation in a participating state; or

(iv) a conviction in a participating state could have led to the forfeiture of privileges under Montana law.

(b) Grounds other than those listed in subsection (3)(a) may not be used to contest the department's decision to suspend the person's privileges.

(4) At the hearing, the department, through its authorized agent, may:

(a) administer oaths;

(b) issue subpoenas for the attendance of witnesses; and

(c) admit all relevant evidence and documents, including notifications from participating states.

(5) Following the hearing, the department, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

History: En. Sec. 5, Ch. 122, L. 1995.

CHAPTER 2

FISHING, HUNTING, AND TRAPPING LICENSES

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Chapter Cross-References

Discrimination in license issuance prohibited, 49-3-204.

Penalty provisions, 87-1-102.

Part 1
General Provisions

87-2-101. Definitions. As used in this chapter, chapter 3, and 87-1-102, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds. The term does not include decoys, silhouettes, or other replicas of wildlife body forms; scents used only to mask human odor; or types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves is restricted to the open season on upland game birds as defined in subsection (15).

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(12) "Person" means individuals, associations, partnerships, and corporations.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; re-en. Sec. 3681, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; amd. Sec. 1, Ch. 189, L. 1971; amd. Sec. 1, Ch. 167, L. 1973; amd. Sec. 1, Ch. 27, L. 1974; amd. Sec. 1, Ch. 67, L. 1975; amd. Sec. 1, Ch. 93, L. 1975; amd. Sec. 1, Ch. 113, L. 1975; amd. Sec. 1, Ch. 235, L. 1977; R.C.M. 1947, 26-201; amd. Sec. 6, Ch. 44, L. 1979; amd. Sec. 1, Ch. 46, L. 1979; amd. Sec. 1, Ch. 478, L. 1979; amd. Sec. 1, Ch. 420, L. 1983; amd. Sec. 1, Ch. 568, L. 1985; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 5, Ch. 417, L. 1995.

Cross-References

Fixing of seasons and limits on game, birds, fish, or fur-bearing animals, 87-1-304.

Unlawful for "person" to conduct contest based on size of game animals, 87-3-307.

Closed season on certain game birds, 87-3-402, 87-3-403.

87-2-102. *(Temporary)* **Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet residency criteria of subsections (4)(b) through (4)(e); or

(b) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and a certificate of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately prior to making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The

resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status.

87-2-102. *(Effective March 1, 1998)* **Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet residency criteria of subsections (4)(b) through (4)(e); or

(b) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status.

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963; amd. Sec. 1, Ch. 33, L. 1967; amd. Sec. 1, Ch. 37, L. 1967; amd. Sec. 1, Ch. 283, L. 1973; R.C.M. 1947, 26-202.3; amd. Sec. 2, Ch. 478, L. 1979; amd. Sec. 1, Ch. 494, L. 1983; amd. Sec. 1, Ch. 322, L. 1985; amd. Sec. 1, Ch. 321, L. 1991; amd. Sec. 1, Ch. 219, L. 1993; amd. Sec. 2, Ch. 589, L. 1993; amd. Sec. 7, Ch. 417, L. 1995; amd. Sec. 1, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1)(b), near middle of first sentence before "of competency", substituted "proof" for "a certificate"; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

State parks — fees and charges, 23-1-105.

Resident not required to pay primitive parks user fee, 23-1-118.

Outfitters and guides — resident Montana hunting or fishing license, 37-47-101.

Application for license, 87-2-106.

Unlawful possession of hunting license or permit of another, 87-2-114.

False statement in license application, 87-2-205.

87-2-103. License required. (1) Except as provided in subsection (2), it is unlawful for a person to:

(a) hunt or trap or attempt to hunt or trap any game animal, any game bird, or any fur-bearing animal or to fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds, except as provided by law or as provided by the department; or

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or to fish for any fish, except at the places and during the periods and in the manner defined by law or as defined by the department; or

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper license or permit from the department to do so; or

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

History: En. Sec. 2, Ch. 238, L. 1921; re-en. Sec. 3682, R.C.M. 1921; amd. Sec. 13, Ch. 192, L. 1925; amd. Sec. 7, Ch. 59, L. 1927; amd. Sec. 3, Ch. 224, L. 1947; amd. Sec. 27, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202; amd. Sec. 1, Ch. 255, L. 1979; amd. Sec. 1, Ch. 49, L. 1993; amd. Sec. 8, Ch. 417, L. 1995.

Cross-References

Rabies control — restrictions on possession of wild animals, Title 50, ch. 23, part 1.

Waste of fish or game or furbearers, 87-3-102, 87-3-506.

Limit on number of game animals, 87-3-103.

Unlawful to hunt or fish during closed season, 87-3-104, 87-3-402.

Unlawful to buy, sell, possess, or transport certain wildlife, 87-3-111, 87-3-112, 87-3-118, 87-4-705, 87-5-201.

Taking of furbearers out of season, 87-3-501.

Sale of fish or spawn unlawful, 87-4-601.

87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(17); amd. Sec. 1, Ch. 99, L. 1979; amd. Sec. 1, Ch. 554, L. 1981; amd. Sec. 2, Ch. 494, L. 1983; amd. Sec. 1, Ch. 237, L. 1987; amd. Sec. 2, Ch. 431, L. 1989.

Cross-References

When number may be restricted, 87-1-304.
Limit on Class B-10 licenses, 87-2-505.
Restrictions on hunting licenses, 87-2-506.
Limit on Class B-11 licenses, 87-2-510.

87-2-105. *(Temporary)* **Safety instruction required.** (1) A hunting license may not be issued to a resident person under the age of 18 years unless the resident presents to the person authorized to issue the license a certificate of competency as provided by this section.

(2) A hunting license may not be issued to a nonresident person under the age of 18 years unless the nonresident presents to the person authorized to issue the license a certificate of competency, as provided in this section, or a certificate verifying that the nonresident has successfully completed a course in the safe handling of firearms in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the member or dependent presents to the person authorized to issue the license a certificate of competency, as provided in this section, or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the resident or nonresident presents to the person authorized to issue the license an archery license issued for a prior hunting season or a certificate of completion from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bow hunter

education requirements. As part of those public information efforts, the department shall notify by mail all individuals who purchased a Class A-2 special bow and arrow license during the 1990-91 hunting season.

(5) The department shall provide for a course of instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of competency in the safe handling of firearms to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

87-2-105. *(Effective March 1, 1998)* **Safety instruction required.** (1) A hunting license may not be issued to a resident person under the age of 18 years unless the person authorized to issue the license receives proof of competency as provided by this section.

(2) A hunting license may not be issued to a nonresident person under the age of 18 years unless the person authorized to issue the license receives proof of competency, as provided in this section, or a certificate verifying that the nonresident has successfully completed a course in the safe handling of firearms in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license receives proof of competency, as provided in this section, or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or receives proof of completion of a bowhunter education course from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(5) The department shall provide for a course of instruction in the safe handling of firearms and for that purpose may cooperate with any reputable

organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of competency in the safe handling of firearms to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of competency.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(2)(a), (part(6)); amd. Sec. 1, Ch. 210, L. 1987; amd. Sec. 1, Ch. 217, L. 1991; amd. Sec. 2, Ch. 219, L. 1993; amd. Sec. 2, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1), after "unless the", deleted "resident presents to the" and after "the license" substituted "receives proof" for "a certificate"; in (2), after "unless the", deleted "nonresident presents to the" and after "the license" substituted "receives proof" for "a certificate"; in (3), near middle after "unless the", deleted "member or dependent presents to the" and after "the license" substituted "receives proof" for "a certificate"; in (4), in first sentence after "unless the", deleted "resident or nonresident presents to the", after "the license" inserted "receives", and after "season or" substituted "receives proof of completion of a bowhunter education course" for "a certificate of completion" and deleted fourth sentence that read: "As part of those public information efforts, the department shall notify by mail all individuals who purchased a Class A-2 special bow and arrow license during the 1990-91 hunting season"; inserted (7) regarding adoption of rules concerning proof of competency; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

87-2-106. *(Temporary)* **Application for license — penalties for violation — forfeiture of privileges.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state the applicant's name, age, occupation, address of permanent residence, and post-office address, the applicant's qualifying length of time as a resident in the state of Montana, whether a citizen of the United States or an alien, and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

87-2-106. *(Effective March 1, 1998)* **Application for license — penalties for violation — forfeiture of privileges.** (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R.C.M. 1921; amd. Sec. 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, L. 1969; amd. Sec. 5, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-204; amd. Sec. 3, Ch. 494, L. 1983; amd. Sec. 2, Ch. 322, L. 1985; amd. Sec. 1, Ch. 106, L. 1987; amd. Sec. 80, Ch. 83, L. 1989; amd. Sec. 2, Ch. 416, L. 1989; amd. Sec. 4, Ch. 277, L. 1991; amd. Sec. 2, Ch. 321, L. 1991; amd. Sec. 9, Ch. 417, L. 1995; amd. Sec. 3, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1), in second sentence before "address", inserted "street", after "residence" substituted "mailing" for "and post-office", and after "Montana" substituted "and status as" for "whether"; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

Interstate Wildlife Violation Compact, Title 87, ch. 1, part 8.

Resident defined, 87-2-102.

Falsifying application for wildlife conservation license, 87-2-205.

87-2-107. License form. The form of the license shall be determined and the license blanks prepared by the department and furnished by it to the officers and persons authorized to issue the same. Said licenses shall be issued in the name of the department and be countersigned by the officer or person issuing the same. Each license issued shall be signed by the licensee in ink or indelible pencil on the face thereof.

History: En. Sec. 8, Ch. 238, L. 1921; re-en. Sec. 3688, R.C.M. 1921; re-en. Sec. 3688, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-212.

87-2-108. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 165, L. 1967; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-212.1; amd. Sec. 2, Ch. 218, L. 1979.

87-2-109. Carrying and exhibiting license and identification. (1) Except as provided in 87-2-114(2), it is unlawful for a person to whom a license or permit has been issued to fish, to hunt for any game bird or game animal, or to attempt to hunt for any fur-bearing animal in this state unless the person is carrying the required license, licenses, or permit at the time.

(2) It is unlawful to refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it.

History: En. Sec. 9, Ch. 238, L. 1921; re-en. Sec. 3689, R.C.M. 1921; amd. Sec. 10, Ch. 59, L. 1927; re-en. Sec. 3689, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1947; amd. Sec. 24, Ch. 511, L. 1973; amd. Sec. 29, Ch. 9, L. 1977; R.C.M. 1947, 26-213; amd. Sec. 3, Ch. 321, L. 1991; amd. Sec. 10, Ch. 417, L. 1995.

Cross-References

License check stations, 87-1-207.

Duty of wardens to check licenses, 87-1-502.

87-2-110. Alteration, attachment, or transfer of license. A person may not at any time alter or change in any material manner or loan or transfer any license to another person. A person other than the person to whom a license is issued may not use the license. A person may not attach the person's license to a game animal killed by another person.

History: En. Sec. 12, Ch. 238, L. 1921; re-en. Sec. 3692, R.C.M. 1921; re-en. Sec. 3692, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1955; amd. Sec. 7, Ch. 9, L. 1977; R.C.M. 1947, 26-217; amd. Sec. 12, Ch. 417, L. 1995.

87-2-111. Termination of license. Such licenses shall be void after the last day of February next succeeding their issuance, except that trapping licenses as described in part 6 of this chapter shall be void after June 30 next succeeding their issuance.

History: En. Sec. 10, Ch. 238, L. 1921; re-en. Sec. 3690, R.C.M. 1921; re-en. Sec. 3690, R.C.M. 1935; R.C.M. 1947, 26-214; amd. Sec. 4, Ch. 494, L. 1983; amd. Sec. 2, Ch. 304, L. 1985.

87-2-112. Forfeiture of license or permit for littering. Any holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit his license and privilege to hunt, fish, camp, or trap within Montana for a period of 1 year from the date of conviction.

History: En. Sec. 1, Ch. 43, L. 1971; amd. Sec. 2, Ch. 480, L. 1973; amd. Sec. 4, Ch. 465, L. 1977; R.C.M. 1947, 26-812.

Cross-References

Overnight camping fee discount, 23-1-105.

Littering unlawful, 75-10-212, 75-10-233.

Revocation of exception to license requirement, 87-2-804.

87-2-113. Drawing fee. (1) When the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a $3 per species drawing fee with each application submitted.

(2) This fee must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

(3) The payment of a drawing fee confers no hunting rights or privileges.

(4) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304.

History: En. Sec. 14, Ch. 554, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 592, L. 1991.

87-2-114. Unlawful possession of hunting license or permit of another — penalties. (1) Except as provided in subsection (2), it is unlawful for a person to carry or have physical control over a valid and unused hunting license or permit issued to another person while in any location that the species to be hunted may inhabit.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued, is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permit and license privileges for not less than 3 years or up to a lifetime revocation from the date of conviction.

History: En. Sec. 11, Ch. 417, L. 1995.

87-2-115 through 87-2-119 reserved.

87-2-120. Lawful means of angling or fishing. The only lawful means of angling or fishing is by hook and single line or single rod, in hand or within immediate control. All other methods of angling or fishing, unless authorized by commission rule, are unlawful.

History: **En. Sec. 6, Ch. 417, L. 1995.**

Cross-References

Interstate fishing privileges, Title 87, ch. 2, part 10.

Part 2
Wildlife Conservation License

87-2-201. Wildlife conservation license prerequisite for other licenses. Except as provided in 87-2-803(5), it is unlawful for any person or persons to purchase any hunting, fishing, or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: **En. Sec. 1, Ch. 172, L. 1969; R.C.M. 1947, 26-229; amd. Sec. 1, Ch. 41, L. 1989.**

87-2-202. *(Temporary)* **Application — stamp attachment — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, occupation, place of residence, post-office address, and the qualifying length of time as a resident in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to rules the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

87-2-202. *(Effective March 1, 1998)* **Application — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969; amd. Sec. 2, Ch. 289, L. 1975; amd. Sec. 8, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-230; amd. Sec. 2, Ch. 554, L. 1981; amd. Sec. 5, Ch. 494, L. 1983; amd. Sec. 4, Ch. 321, L. 1991; amd. Sec. 2, Ch. 592, L. 1991; amd. Sec. 4, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1), in first sentence after "occupation," substituted "street address of permanent residence, mailing address" for "place of residence, post-office address", after "Montana" substituted "and status as" for "state whether the applicant is", and near end substituted "signed" for "subscribed"; in (2), after "licenses", substituted "issued in a form determined by the department" for "in the form of tags or stamps issued to a holder of a wildlife conservation license", after "must be" deleted "affixed to or", and after "recorded" deleted "on the wildlife conservation license"; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

Nonresident conservation license included in Class B-10 and Class B-11 nonresident combination licenses, 87-2-505, 87-2-511.

Resident conservation license included in Class AAA combination sports license, 87-2-711.

87-2-203. Unlawful sales of licenses. It shall be unlawful for any license agent to sell any hunting, fishing, or trapping license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969; R.C.M. 1947, 26-231.

87-2-204. Disposition of wildlife conservation license fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the state special revenue fund to the credit of the department in accordance with the provisions of 87-1-601.

History: En. Sec. 5, Ch. 172, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-233; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Disposition of fees, 87-1-201, 87-1-601, 87-1-605, 87-1-701, 87-1-708, 87-1-710.

87-2-205. False statement in license application. It is unlawful to subscribe to any false statement in an application for a wildlife conservation license.

History: En. Sec. 4, Ch. 172, L. 1969; amd. Sec. 31, Ch. 9, L. 1977; R.C.M. 1947, 26-232.

Cross-References

Unsworn falsification to authorities, 45-7-203.

Part 3
Fishing Licenses

Part Cross-References

Use of certain fishing license fees to purchase recreational facilities, 87-1-605.

87-2-301. Class A—resident fishing license. Any resident, as defined by 87-2-102, upon payment of a fee of $11 beginning March 1, 1992, and $13 beginning March 1, 1994, shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(1); amd. Sec. 3, Ch. 554, L. 1981; amd. Sec. 1, Ch. 680, L. 1983; amd. Sec. 1, Ch. 255, L. 1985; amd. Sec. 6, Ch. 601, L. 1989; amd. Sec. 3, Ch. 592, L. 1991.

Cross-References

River restoration program, 87-1-255 through 87-1-259.

87-2-302. Class B—nonresident fishing license. Any person not a resident, as defined in 87-2-102, upon payment of the sum of $40 beginning March 1, 1992, and $45 beginning March 1, 1994, to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(5); amd. Sec. 4, Ch. 554, L. 1981; amd. Sec. 2, Ch. 255, L. 1985; amd. Sec. 7, Ch. 601, L. 1989; amd. Sec. 4, Ch. 592, L. 1991.

Cross-References

River restoration program, 87-1-255 through 87-1-259.

87-2-303. Repealed. Sec. 16(2), Ch. 554, L. 1981.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(8).

87-2-304. Class B-4—two-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of $10 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a 2-day nonresident fishing license which shall authorize the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 2 calendar days as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969; amd. Sec. 2, Ch. 408, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.6; amd. Sec. 5, Ch. 554, L. 1981; amd. Sec. 2, Ch. 680, L. 1983; amd. Sec. 3, Ch. 255, L. 1985; amd. Sec. 5, Ch. 592, L. 1991.

87-2-305. Navigable waters subject to fishing rights. Navigable rivers, sloughs, or streams between the lines of ordinary high water thereof of the state of Montana and all rivers, sloughs, and streams flowing through any public lands of the state shall hereafter be public waters for the purpose of angling, and any rights of title to such streams or the land between the high water flow lines or within the meander lines of navigable streams shall be subject to the right of any person owning an angler's license of this state who desires to angle therein or along their banks to go upon the same for such purpose.

History: En. Sec. 3, Ch. 95, L. 1933; re-en. Sec. 3717.3, R.C.M. 1935; R.C.M. 1947, 26-338.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Owner of land bounded by water, 70-16-201.

Title by prescription, 70-19-405.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

Adjudication of water rights, Title 85, ch. 2, part 2.

87-2-306. Paddlefish tags. The department may issue paddlefish tags to holders of valid Class A, Class B, and Class B-4 fishing licenses for a fee of $4 beginning March 1, 1992, and $5 beginning March 1, 1994, for residents and $15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

History: En. Sec. 6, Ch. 554, L. 1981; amd. Sec. 4, Ch. 255, L. 1985; amd. Sec. 6, Ch. 592, L. 1991.

Cross-References

Donation of paddlefish eggs for caviar production, 87-4-601.

87-2-307 reserved.

87-2-308. Class A-8—resident temporary fishing license. (1) Any resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license is entitled to a resident temporary fishing license authorizing the holder to fish with hook and line in designated waters, for a period of time determined by the commission and indicated on the license, upon payment to any agent of the department authorized to issue fishing licenses of the amount determined by the commission. Cost of the license and length of time for which the license is effective must be set:

(a) at an amount that is less than the Class A resident fishing license; and

(b) at an amount and for a length of time that the commission determines will serve at a reasonable price the needs of residents who fish occasionally.

(2) Terms and conditions of the license must be prescribed by rules of the commission.

History: **En. Sec. 1, Ch. 336, L. 1997.**

Part 4
Game Bird Licenses

Part Cross-References

Seasonal rules adopted annually, 2-4-102.

Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.

Posting and publication of orders, rules, and regulations, 87-1-202.

87-2-401. Class A-1—resident upland game bird license. Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $6, receive a Class A-1 license that entitles the holder to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(part(2)); amd. Sec. 3, Ch. 478, L. 1979; amd. Sec. 1, Ch. 105, L. 1987; amd. Sec. 5, Ch. 636, L. 1987; amd. Sec. 1, Ch. 32, L. 1995; amd. Sec. 13, Ch. 417, L. 1995.**

Cross-References

Funding of upland game bird enhancement program, 87-1-246.

87-2-402. Class B-1—nonresident upland game bird license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $55 may receive a Class B-1 license that entitles the holder to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(part(6)); amd. Sec. 4, Ch. 478, L. 1979; amd. Sec. 2, Ch. 105, L. 1987; amd. Sec. 6, Ch. 636, L. 1987; amd. Sec. 7, Ch. 592, L. 1991; amd. Sec. 2, Ch. 32, L. 1995; amd. Sec. 14, Ch. 417, L. 1995.**

Cross-References

Funding of upland game bird enhancement program, 87-1-246.

87-2-403. *(Temporary)* **Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $4 beginning March 1, 1992, and $5 beginning March 1, 1994, for residents and $13 for nonresidents. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person's wildlife conservation license. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

87-2-403. *(Effective March 1, 2006)* **Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $5. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person's wildlife conservation license.

History: En. Sec. 1, Ch. 35, L. 1959; amd. Sec. 3, Ch. 148, L. 1963; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-510; amd. Sec. 5, Ch. 478, L. 1979; amd. Sec. 7, Ch. 554, L. 1981; amd. Sec. 3, Ch. 304, L. 1985; amd. Sec. 3, Ch. 598, L. 1987; amd. Sec. 8, Ch. 592, L. 1991; amd. Sec. 15, Ch. 417, L. 1995.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Fixing of seasons and bag and possession limits, 87-1-304, 87-3-402.

Use of rifles during spring wild turkey season prohibited, 87-3-401.

Tagging turkeys, 87-3-404, 87-3-405.

87-2-404. Three-day nonresident captive-reared bird hunting stamp. A person who is 12 years of age or older and who is not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes the holder to hunt game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license.

History: En. Sec. 4, Ch. 371, L. 1991; amd. Sec. 16, Ch. 417, L. 1995.

87-2-405 through 87-2-410 reserved.

87-2-411. *(Temporary)* **Stamp required to hunt migratory game birds.** It is unlawful for any person 15 years of age or older to hunt migratory game birds without first having obtained a valid migratory bird stamp from the department. The fee for the stamp is $5.

87-2-411. *(Effective March 1, 1998)* **License required to hunt migratory game birds.** It is unlawful for any person 15 years of age or older to hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for the license is $5.

History: En. Sec. 1, Ch. 609, L. 1985; amd. Sec. 1, Ch. 431, L. 1989; amd. Sec. 3, Ch. 32, L. 1995; amd. Sec. 17, Ch. 417, L. 1995; amd. Sec. 5, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in two places substituted "license" for "stamp". Amendment effective March 1, 1998.

87-2-412. *(Temporary)* **Procurement and sale of artwork for migratory bird stamp — disposition of proceeds.** (1) The department shall contract with an art publisher for the selection, by contest or other method, of a design for the annual migratory bird stamp required by 87-2-411 and for the production of the stamp and related artwork. The contract must provide that only designs submitted by Montana artists may be selected. The department shall provide for the sale of stamps exclusively by the department or its license agents, but may make other arrangements for the sale of related artwork that it determines appropriate. The procurement and sale of the stamps and artwork are exempt from the provisions of Title 18, chapter 4, part 3.

(2) Money received from the sale of stamps and related artwork must be deposited in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana.

87-2-412. *(Effective March 1, 1998)* **Procurement and sale of artwork for migratory bird stamp — disposition of proceeds.** (1) The department shall contract with an art publisher for the selection, by contest or other method, of a design for the annual migratory bird stamp and for the production of the stamp and related artwork. The contract must provide that only designs submitted by Montana artists may be selected. The department shall provide for the sale of stamps exclusively by the department or its license agents, but may make other arrangements for the sale of related artwork that it determines appropriate. The procurement and sale of the stamps and artwork are exempt from the provisions of Title 18, chapter 4, part 3.

(2) Money received from the sale of stamps and related artwork must be deposited in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana.

History: En. Sec. 2, Ch. 609, L. 1985; amd. Sec. 4, Ch. 32, L. 1995; amd. Sec. 6, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1), near middle of first sentence after "bird stamp", deleted "required by 87-2-411". Amendment effective March 1, 1998.

Cross-References

Wetlands Protection Advisory Council to review use of money received under this section, 2-15-3405.

Aquatic ecosystem protections, Title 75, ch. 7.

Part 5

Game Animal Licenses

Part Cross-References

Seasonal rules adopted annually, 2-4-102.

Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.

Posting and publication of orders, rules, and regulations, 87-1-202.

87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle the holder to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $13;
(b) Class A-4, deer B tag, $8;
(c) Class A-5, elk tag, $16;
(d) Class A-6, black bear tag, $15;
(e) Class A-7, antlerless elk tag, $16.

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) A person may not take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3).

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(4); amd. Sec. 6, Ch. 478, L. 1979; amd. Sec. 8, Ch. 554, L. 1981; amd. Sec. 3, Ch. 680, L. 1983; amd. Sec. 1, Ch. 331, L. 1985; amd. Sec. 2, Ch. 623, L. 1987; amd. Sec. 1, Ch. 296, L. 1989; amd. Sec. 1, Ch. 418, L. 1991; amd. Sec. 9, Ch. 592, L. 1991; amd. Sec. 1, Ch. 263, L. 1995; amd. Sec. 18, Ch. 417, L. 1995.

87-2-502. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167,

L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(9).

87-2-503. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(10).

87-2-504. *(Temporary)* **Class B-7 and B-8—nonresident deer licenses.** (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, $175;

(ii) Class B-8, deer B tag, $75.

(b) The license entitles the holder to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Not more than 5,000 Class B-7 licenses may be sold in any license year.

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions. *(Terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)*

87-2-504. *(Effective October 1, 2001)* **Class B-7 and B-8—nonresident deer licenses.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $150; Class B-8, deer B tag, $50; and will entitle the holder to hunt the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state. Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1). *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

87-2-504. *(Effective March 1, 2006)* **Class B-7 and B-8—nonresident deer licenses.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $100; Class B-8, deer B tag, $50; and will entitle the holder to hunt the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(11); amd. Sec. 7, Ch. 478, L. 1979; amd. Sec. 3, Ch. 458, L. 1987; amd. Sec. 4, Ch. 598, L. 1987; amd. Sec. 19, Ch. 417, L. 1995; amd. Sec. 2, Ch. 355, L. 1997.

Compiler's Comments

1997 Amendment: (Temporary version) Chapter 355 in (1)(a)(i) increased cost of Class B-7 deer tag from $150 to $175; in (1)(a)(ii) increased cost of Class B-8 deer tag from $50 to $75; in (1)(b), at end before "rules", substituted "commission" for "department"; in (2), in first sentence after "license", substituted "may" for "must", after "region or" inserted "regions or a", and after "administrative region" inserted "or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts", in second sentence, after "state", inserted "except as provided in 87-2-512(1)(d)", and deleted third sentence that read: "Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1)"; inserted (3) allowing the Commission to set certain conditions on Class B-8 licenses; and made minor changes in style. Amendment effective April 22, 1997, and terminates October 1, 2001.

Termination: Section 6, Ch. 355, L. 1997, provided: "[This act] terminates October 1, 2001."

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Prerequisite — wildlife conservation license, 87-2-201.

87-2-505. *(Temporary)* **Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of $475 or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles the holder to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

87-2-505. *(Effective October 1, 2001)* **Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of $462 beginning March 1, 1992, and $475 beginning March 1, 1994, or upon payment of the fee of $472 beginning March 1, 1992, and $485 beginning March 1, 1994, if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

87-2-505. *(Effective March 1, 2006)* **Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of $398 or upon payment of the fee of $408 if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(12); amd. Sec. 8, Ch. 478, L. 1979; amd. Sec. 9, Ch. 554, L. 1981; amd. Sec. 4, Ch. 680, L. 1983; amd. Sec. 5, Ch. 255, L. 1985; amd. Sec. 5, Ch. 598, L. 1987; amd. Sec. 7, Ch. 636, L. 1987; amd. Sec. 10, Ch. 592, L. 1991; amd. Sec. 8, Ch. 459, L. 1995.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Funding of upland game bird enhancement program, 87-1-246.

Restriction on number, 87-1-304, 87-2-104.

87-2-506. Restrictions on hunting licenses. (1) The department may prescribe by rule the number of hunting licenses to be issued. Any license sold may be restricted to a specific administrative region, hunting district, or other designated area and may specify the species, age, and sex to be taken and the time period for which the license is valid.

(2) When the number of valid resident applications for big game licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of big game licenses or permits issued to nonresident license or permit holders in the region, district, or area may not exceed 10% of the total issued.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(f); amd. Sec. 9, Ch. 478, L. 1979; amd. Sec. 4, Ch. 304, L. 1985.

Cross-References

Fixing of seasons and bag and possession limits, 87-1-304.

Number of licenses allowed, 87-2-104.

87-2-507. *(Temporary)* **Class D-1—nonresident mountain lion license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $320 may receive a Class D-1 license that entitles the holder to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

87-2-507. *(Effective March 1, 2006)* **Class D-1—nonresident mountain lion license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $300 may receive a Class D-1 license that entitles the holder to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129,

L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(19); amd. Sec. 10, Ch. 478, L. 1979; amd. Sec. 5, Ch. 680, L. 1983; amd. Sec. 6, Ch. 598, L. 1987; amd. Sec. 20, Ch. 417, L. 1995.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

87-2-508. Class D-2—resident mountain lion license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of $15, may receive a Class D-2 license that entitles the holder to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(20); amd. Sec. 11, Ch. 478, L. 1979; amd. Sec. 6, Ch. 680, L. 1983; amd. Sec. 11, Ch. 592, L. 1991; amd. Sec. 21, Ch. 417, L. 1995.

87-2-509. Tagging of carcasses of game animals. (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags, coupons, or markers as the department prescribes. When any person kills any game animal under the license, the person shall immediately cut out from the tag, coupon, or other marker the date the animal was killed and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, the license holder's address, and any other information requested on the tag, coupon, or other marker. The tag, coupon, or other marker must be kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed. When a game animal has been lawfully killed and the proper tag, coupon, or other marker is attached to the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(2) It is unlawful for a person who kills any game animal by authority of any license issued for the killing of the game animal to fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued to the carcass of the game animal or portion of the game animal. It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion of the game animal while the animal is possessed by

the person. It is unlawful for a person to tag a game animal with a tag restricted to a hunting district other than the hunting district where the game animal was killed.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977; R.C.M. 1947, 26-202.2(3); amd. Sec. 3, Ch. 589, L. 1993; amd. Sec. 22, Ch. 417, L. 1995.

Cross-References

Tagging of turkey, 87-3-404, 87-3-405.

Tagging grizzly bear, 87-5-302.

87-2-510. *(Temporary)* **Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of $245 or upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter or upon payment of the fee of $250 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Not more than 2,300 unreserved Class B-11 licenses may be sold in any 1 license year. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

87-2-510. *(Effective October 1, 2001)* **Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of $245 or upon payment of the fee of $250 if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

87-2-510. *(Effective March 1, 2006)* **Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of $220 or upon payment of the fee of $225 if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

History: En. Sec. 1, Ch. 458, L. 1987; amd. Sec. 11, Ch. 598, L. 1987; amd. Sec. 12, Ch. 592, L. 1991; amd. Sec. 9, Ch. 459, L. 1995.

87-2-511. *(Temporary)* **Sale and use of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. A resident sponsor of a Class B-11 license may submit no more than 20 certificates of sponsorship in any license year prior to expiration of the moratorium established in 37-47-315, after which no more than 10 certificates of sponsorship may be submitted in any license year.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.

(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.

(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses. *(Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)*

87-2-511. *(Effective October 1, 2001)* **Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all unsold reserved licenses that are available under subsection (6) must be issued by a drawing among all applicants for the respective unreserved licenses.

History: En. Sec. 2, Ch. 458, L. 1987; amd. Sec. 19, Ch. 328, L. 1995; amd. Secs. 10, 15, Ch. 459, L. 1995.

87-2-512. *(Temporary)* **Separation of Class B-7 license from Class B-10 license for deer management purposes — disposition of license revenue.** (1) The commission may by rule separate the Class B-7 license from the Class B-10 license and sell the separated Class B-7 license, giving a preference to any Class B-10 license holder to purchase one of the separated Class B-7 licenses. In the case of separated Class B-7 licenses that are not purchased by Class B-10 license holders, the commission, for purposes of sound deer management:

(a) may authorize the sale of not more than 5,000 Class B-7 licenses that have been separated from the Class B-10 licenses, as limited by 87-2-504;

(b) may authorize all or a portion of the separated Class B-7 licenses to be sold as Class B-11 combination licenses;

(c) shall set the fees for the separated licenses as follows:

(i) the fee for a Class B-10 license without the deer tag may not be more than the fee set in 87-2-505 for licenses in the general category and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268; and

(ii) the fee for the separated Class B-11 licenses may not be more than the fees specified in 87-2-510 for licenses in the general and landowner-sponsored categories and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268;

(d) may assign the separated Class B-7 or Class B-11 licenses for use in specific administrative regions, portions of administrative regions, hunting districts, or portions of hunting districts;

(e) may allocate a portion of the separated Class B-7 or Class B-11 licenses among the general and landowner-sponsored categories established in 87-2-510 and 87-2-511 but not count those licenses as part of the statutory quotas, with the Class B-7 licenses then subject to the requirements and procedures of 87-2-511;

(f) may allocate a portion of the separated Class B-7 or Class B-11 licenses to the outfitter-sponsored category subject to the requirements and procedures of 87-2-511, except that licenses in the outfitter-sponsored category may not comprise more than one-third of the licenses issued pursuant to this section and the number issued, when added to the number of Class B-11 licenses issued under 87-1-268, may not exceed 2,300 in any license year; and

(g) may condition the separated Class B-7 and Class B-11 licenses as appropriate and necessary to manage the harvest of deer, including restricting the use of a license to either mule deer or whitetail deer.

(2) The revenue from any Class B-11 licenses that have been separated from Class B-10 licenses must be deposited in the state special revenue account to the credit of the department and not allocated pursuant to other statutory requirements generally applicable to Class B-11 licenses. The revenue from Class B-10 licenses sold without a deer tag must be allocated in the same manner as revenue from Class B-10 licenses sold with a deer tag. *(Terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)*

History: En. Sec. 3, Ch. 355, L. 1997.

Compiler's Comments

Effective Date: Section 5, Ch. 355, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 22, 1997.

Termination: Section 6, Ch. 355, L. 1997, provided: "[This act] terminates October 1, 2001."

Part 6
Trapping Licenses

Part Cross-References

Seasonal rules adopted annually, 2-4-102.

Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.

Posting and publication of orders, rules, and regulations, 87-1-202.

Unlawful to trap without license, 87-2-103.

87-2-601. Class C—trapper's license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 13 years of age or older, upon making application and payment of a fee of $20 to the department, may receive a Class C license which shall authorize the holder thereof to trap fur-bearing animals and hunt bobcat, wolverine, and Canada lynx within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(14); amd. Sec. 12, Ch. 478, L. 1979; amd. Sec. 7, Ch. 680, L. 1983; amd. Sec. 2, Ch. 329, L. 1985.

Cross-References

Hunting bobcats with dogs, 87-3-124.

87-2-602. Class C-1—landowner's trapping license. Except as otherwise provided in this chapter, any individual who owns land in this state or any tenant or member of the immediate family of said owner or tenant, upon making application to the department and payment of the fee of $1, may receive a Class C-1 license which shall entitle the holder thereof to trap any fur-bearing animal and to hunt bobcat, wolverine, and lynx on land owned or leased by him or his immediate family at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(15); amd. Sec. 13, Ch. 478, L. 1979.

Cross-References

Hunting bobcats with dogs, 87-3-124.

87-2-603. Class C-2—nonresident trapper's license. (1) Any person not a resident as defined in 87-2-102, who is 13 years of age or older, upon making application to the department and paying a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals and nongame wildlife within the state. Such trapping or snaring is permitted only after October 15 of each license year, in such manner as may be lawful under the laws of the state and the rules of the commission, and at such places as may be designated in the license.

(2) Any person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1).

History: En. Sec. 2, Ch. 255, L. 1979; amd. Sec. 3, Ch. 329, L. 1985.

Cross-References

Unlawful to trap or snare without license, 87-2-103.

87-2-604. Permission of landowner required. Every holder of a Class C-2 trapper's license shall obtain written permission from the landowner, lessee, or his agent before trapping or snaring predatory animals or nongame wildlife on private property.

History: En. Sec. 3, Ch. 255, L. 1979.

Cross-References

Penalty for failure to acquire permission — definition of enter or remain unlawfully, 45-6-201.

Use of snare with landowner's consent, 87-3-107.

Permission required to drive motor vehicle on private land, 87-3-125.

Big game hunting with landowner permission, 87-3-304.

87-2-605. Class C-3—youth trapping license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 6 years of age or older and less than 13 years of age, upon making application and payment of a fee of $3 to the department, may receive a Class C-3 license, which authorizes the holder to trap fur-bearing animals, the trapping of which has not been restricted by the commission, within the state of Montana at such times and in such manner as may be lawful under the laws of the state and the regulations of the department, and at such places as may be designated in the license.

History: En. Sec. 1, Ch. 329, L. 1985.

Cross-References

Fur-bearing animals — restrictions and regulations, Title 87, ch. 3, part 5.

Part 7

Special and Combination Licenses and Nongame Certificate

Part Cross-References

Seasonal rules adopted annually, 2-4-102.

Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.

Posting and publication of orders, rules, and regulations, 87-1-202.

87-2-701. *(Temporary)* **Special licenses.** (1) An applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, $475;

(b) mountain goat—resident, $75; nonresident, $475;
(c) mountain sheep—resident, $75; nonresident, $475;
(d) antelope—resident, $11; nonresident, $150;
(e) grizzly bear—resident, $50; nonresident, $300;
(f) black bear—nonresident, $120.

(2) If a holder of a valid special grizzly bear license kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after date of kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department. *(Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)*

87-2-701. *(Effective March 1, 2006)* **Special licenses.** (1) An applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, $455;
(b) mountain goat—resident, $75; nonresident, $455;
(c) mountain sheep—resident, $75; nonresident, $455;
(d) antelope—resident, $11; nonresident, $130;
(e) grizzly bear—resident, $50; nonresident, $300;
(f) black bear—nonresident, $100.

(2) If a holder of a valid special grizzly bear license kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after date of kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(13); amd. Sec. 1, Ch. 100, L. 1979; amd. Sec. 14, Ch. 478, L. 1979; amd. Sec. 10, Ch. 554, L. 1981; amd. Sec. 8, Ch. 680, L. 1983; amd. Sec. 2, Ch. 568, L. 1985; amd. Sec. 7, Ch. 598, L. 1987; amd. Sec. 1, Ch. 401, L. 1991; amd. Sec. 13, Ch. 592, L. 1991; amd. Sec. 2, Ch. 263, L. 1995.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Wildlife conservation license prerequisite, 87-2-201.

Auction of male mountain sheep license, 87-2-722.

Auction of male Shiras moose license, 87-2-724.

87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) After March 27, 1987, a person may lawfully take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) A person who receives a moose, mountain goat, or limited mountain sheep license, with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) A person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977; R.C.M. 1947, 26-202.2(1), (2); amd. Sec. 15, Ch. 478, L. 1979; amd. Sec. 11, Ch. 554, L. 1981; amd. Sec. 1, Ch. 241, L. 1987; amd. Sec. 3, Ch. 431, L. 1989; amd. Sec. 1, Ch. 57, L. 1991; amd. Sec. 1, Ch. 115, L. 1995.

87-2-703. Repealed. Sec. 16(1), Ch. 554, L. 1981.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(21); amd. Sec. 16, Ch. 478, L. 1979.

87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

(3) The fee for a special elk permit is $2 beginning March 1, 1992, and $3 beginning March 1, 1994.

(4) The department may adopt rules necessary to implement this section.

History: En. 26-202.7 by Sec. 2, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.7; amd. Sec. 1, Ch. 358, L. 1991; amd. Sec. 14, Ch. 592, L. 1991.

Cross-References

Resident elk license and special resident and nonresident antlerless elk license, 87-2-501.

87-2-705. Drawing for special elk permits. (1) In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) Subject to the limitation of subsection (4), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where elk permits are awarded under this section shall be issued, upon application, a permit to hunt elk in the hunting district under the terms and conditions of the permit.

(3) An applicant who receives a permit under subsection (2) may designate that the permit be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to receive the permit.

(4) Fifteen percent of the special elk permits available each year under this section in a hunting district must be available to landowners under subsection (2).

(5) The department may promulgate the rules necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(h); amd. Sec. 12, Ch. 554, L. 1981; amd. Sec. 1, Ch. 623, L. 1987; amd. Sec. 1, Ch. 290, L. 1989; amd. Sec. 2, Ch. 418, L. 1991.

87-2-706. Drawing for special antelope licenses. (1) In the event that the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, the licenses must be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are nonambulatory and have a permanent physical disability, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing in which all applicants have an equal chance of being selected.

(3) The department may promulgate rules that are necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(g); amd. Sec. 13, Ch. 554, L. 1981; amd. Sec. 1, Ch. 326, L. 1987; amd. Sec. 77, Ch. 472, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 472 in (2), in first sentence, substituted "nonambulatory and have a permanent physical disability" for "permanently physically handicapped and nonambulatory"; and made minor changes in style.

87-2-707. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.5(1).

87-2-708. Class A-2—special bow and arrow license. A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of $8, a Class A-2 license that authorizes the holder to hunt with bow and arrow the game animals authorized by the licenses held and to possess the carcass of the game animals during seasons and in areas designated by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(3); amd. Sec. 2, Ch. 220, L. 1979; amd. Sec. 17, Ch. 478, L. 1979; amd. Sec. 2, Ch. 210, L. 1987; amd. Sec. 15, Ch. 592, L. 1991; amd. Sec. 23, Ch. 417, L. 1995.

87-2-709 and 87-2-710 reserved.

87-2-711. *(Temporary)* **Class AAA—combination sports license.** (1) A resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued is entitled to:

(a) upon payment of the sum of $54, a combination sports license that permits the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

(b) upon payment of the sum of $64, a combination sports license that permits the holder to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department shall furnish each holder of a combination sports license an appropriate decal.

87-2-711. *(Effective March 1, 1998)* **Class AAA—combination sports license.** (1) A resident, as defined by 87-2-102, who will be 12 years of age or older before September 15 of the season for which the license is issued is entitled to:

(a) upon payment of the sum of $54, a combination sports license that permits the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

(b) upon payment of the sum of $64, a combination sports license that permits the holder to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department may furnish each holder of a combination sports license an appropriate decal.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(18); amd. Sec. 6, Ch. 255, L. 1985; amd. Sec. 8, Ch. 598, L. 1987; amd. Sec. 8, Ch. 636, L. 1987; amd. Secs. 8, 9, Ch. 601, L. 1989; amd. Sec. 16, Ch. 592, L. 1991; amd. Sec. 3, Ch. 263, L. 1995; amd. Sec. 7, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (2), after "department", substituted "may" for "shall"; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Funding of upland game bird enhancement program, 87-1-246.

River restoration program, 87-1-255 through 87-1-259.

87-2-712. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(7).

87-2-713. Terminated. Sec. 3, Ch. 109, L. 1989.

History: En. Sec. 1, Ch. 109, L. 1989.

87-2-714 through 87-2-720 reserved.

87-2-721. Repealed. Sec. 16(1), Ch. 554, L. 1981.

History: En. 26-202.8 by Sec. 3, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.8.

87-2-722. Auction of mountain sheep license. (1) The commission may issue one male mountain sheep license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of mountain sheep may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain proceeds of the sale, not to exceed 10%, to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mountain sheep. The proceeds from the auction must be used in addition to any other funds the department uses for the management of mountain sheep. The department shall report the use or investment of auction proceeds to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 1, Ch. 414, L. 1985; amd. Sec. 50, Ch. 349, L. 1993.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-2-723. Repealed. Sec. 4, Ch. 401, L. 1991.

History: En. Secs. 3, 4, Ch. 568, L. 1985.

87-2-724. Auction of Shiras moose license. (1) The commission may issue one male Shiras moose license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of moose may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of moose. The proceeds from the auction must be used in addition to any other funds the department uses for the management of moose.

History: En. Sec. 1, Ch. 174, L. 1987; amd. Sec. 60, Ch. 112, L. 1991; amd. Sec. 51, Ch. 349, L. 1993.

Part 8

Exceptions to License Requirements

87-2-801. Residents over sixty-two years of age. (1) A resident, under the definition of 87-2-102, who is 62 years of age or older is entitled to fish and hunt game birds with a conservation license issued by the department. The form of such license shall be prescribed by the department.

(2) A resident who is 62 years of age or older is also entitled to purchase regular resident deer and elk tags at a price that is one-half of the fee paid by a resident who is 15 years old or older and who is under 62 years of age.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(a); amd. Sec. 1, Ch. 532, L. 1981; amd. Sec. 1, Ch. 169, L. 1983.

Cross-References

State parks — fees and charges, 23-1-105.

Primitive parks user fee — payment by resident not required, 23-1-118.

87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, personal care facilities, and community homes for persons with disabilities. (1) Any veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all correctional facilities and institutions under the jurisdiction of the department of corrections and the department of public health and human services, except the Montana state prison at Deer Lodge or the Montana women's prison, may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and personal care facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(b); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 561, Ch. 546, L. 1995; amd. Sec. 1, Ch. 77, L. 1997; amd. Sec. 29, Ch. 189, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 77 inserted (2) requiring the Department to allow supervised residents of licensed long-term care facilities, nursing care facilities, personal care facilities, and community homes for persons with disabilities to fish without a license upon annual application by facility managers or directors; and made minor changes in style.

Chapter 189 near middle of first sentence of (1), after "all", inserted "correctional facilities and" and near end substituted "Montana women's prison, may" for "women's correctional system, will be entitled to".

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

Applicability: Section 2, Ch. 77, L. 1997, provided: "[Section 1] [87-2-802] applies to license years beginning March 1, 1998."

Cross-References

Servicemen, servicewomen, and veterans, Art. II, sec. 35, Mont. Const.

87-2-803. Persons with disabilities. (1) Persons with disabilities are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age.

(3) A resident or nonresident person with a disability who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A person with a disability

who is issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person is nonambulatory and has a permanent physical disability or that the person's mobility is substantially impaired.

(4) A person with a disability carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a person with a disability to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A person with a disability who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the hunter with a disability by hunting a game animal that has been wounded by the hunter with a disability when the hunter with a disability is unable to pursue and kill the wounded game animal. Any vehicle from which a person with a disability is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle.

(5) A resident of Montana who is certified by the department as suffering from blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(c); amd. Sec. 2, Ch. 169, L. 1983; amd. Sec. 2, Ch. 416, L. 1985; amd. Sec. 2, Ch. 41, L. 1989; amd. Sec. 2, Ch. 49, L. 1993; amd. Sec. 24, Ch. 417, L. 1995; amd. Sec. 306, Ch. 42, L. 1997; amd. Sec. 78, Ch. 472, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (5) substituted "certified by the department as suffering from blindness, as defined in 53-7-301" for "certified by the department as a blind individual, as defined in 53-7-301"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 472 throughout section substituted references to persons with disabilities for references to disabled persons; near end of (3) substituted "nonambulatory and has a permanent physical disability" for "permanently physically handicapped and nonambulatory"; in (4), in last sentence, substituted "persons with disabilities" for "the handicapped"; and made minor changes in style.

Cross-References

Shooting from or across highway, 61-8-369.

General restrictions, 87-3-101.

87-2-804. Revocation of exception. If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by 87-2-801 through 87-2-803 shall be revoked for not less than 6 months.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(d).

Cross-References

Forfeiture of license or permit for littering, 87-2-112.

87-2-805. Persons under fifteen years of age. (1) Resident minors from 12 years through 14 years of age may fish and may hunt upland and migratory birds during the open season with only a conservation license. Resident minors under 12 years of age may fish without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

History: (1)En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-215, R.C.M. 1947; (2)En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.1, R.C.M. 1947; R.C.M. 1947, 26-202.1(16)(e), 26-215(3); amd. Sec. 18, Ch. 478, L. 1979; amd. Sec. 3, Ch. 169, L. 1983; amd. Sec. 7, Ch. 239, L. 1983; amd. Sec. 5, Ch. 304, L. 1985.

87-2-806. Taking fish or game for scientific purposes. (1) It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency or for an individual, who may be investigating a scientific subject for which collection may be necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game rule, provided that a permit to collect is authorized by the department. Under the provisions of this section, a permittee may take, kill, and capture protected or unprotected birds, fish, or animals in any way that is approved by the department, except by the explosion of dynamite. A permittee may not take, kill, or capture more birds, fish, or animals than are necessary for the investigation. A collection permit may not be given for a species for which a taking is prohibited by statute or rule.

(2) A person who desires to engage in the scientific investigation shall apply to the department for a permit. The department may require the applicant to submit a plan of operations that includes the purpose for the collection, collection methodology to be employed, and the qualifications of the person who will be doing the collecting. The department may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the department is satisfied of the good faith and qualifications of the applicant and that the collecting is necessary for a valid purpose, the department:

(a) may issue a permit that must place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken; and

(b) shall require a report of the numbers and species of animals taken by collection areas.

(3) The department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(4) By December 31 of each year, a permittee is required to submit a report to the department that lists the species and numbers of individuals of the species taken and locations from which collections were taken. A permittee who fails to file a required report may not be issued another permit.

(5) The permittee shall pay $50 for the permit, except that a permittee who is a representative of an accredited school, college, university, or other institution of learning or of any governmental agency is exempt from payment of the fee.

(6) The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are allowed in the permit.

(7) A representative of an accredited school, college, university, or other institution of learning or an individual permittee who may have various students or associates assisting throughout the year may apply to have a permit issued that includes the individual and the students or associates. The department shall approve the qualifications of a student or an associate and the level of supervision required by the primary permittee. The students or associates, when carrying a copy of the permit, have the same authorizations and restrictions as the primary applicant. The primary applicant shall keep a record of all students or associates listed on the permit and of the dates when each student or associate conducts a collection under the permit. The primary applicant is responsible for the students' or associates' use of the permit or copies of the permit.

History: En. Sec. 81, Ch. 173, L. 1917; re-en. Sec. 3760, R.C.M. 1921; re-en. Sec. 3760, R.C.M. 1935; amd. Sec. 27, Ch. 224, L. 1947; amd. Sec. 1, Ch. 116, L. 1973; amd. Sec. 43,

Ch. 511, L. 1973; amd. Sec. 49, Ch. 9, L. 1977; R.C.M. 1947, 26-1008; amd. Sec. 1, Ch. 154, L. 1995.

Cross-References

Exception to tattoo requirements for wild animals taken and released as part of scientific program, 87-1-234.

Unlawful to use explosives or poisons in taking fish, 87-3-206.

Taking of endangered species for educational, scientific, or other purposes, 87-5-109.

Capturing animals or birds in game preserve for scientific purpose, 87-5-401.

87-2-807. Taking migratory game birds for propagation — avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101(9), for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section.

History: En. Sec. 1, Ch. 262, L. 1985; amd. Sec. 25, Ch. 417, L. 1995.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-2-808. Fishing license exception for angler educational events and activities. (1) A participant in any angler educational event or activity approved by the department may fish without the otherwise required fishing license while participating on the specified body of water during the event.

(2) To be eligible during the 2-year period following April 16, 1997, an angler educational event or activity must be taught under the guidance of an employee of the department or by an instructor certified by the department as competent to instruct in the laws, techniques, and ethics of angling. At the end of the 2-year period, angler educational events and activities should be conducted as provided in subsection (4).

(3) The department shall adopt rules to implement this section.

(4) The department shall develop a statewide network of volunteers to conduct the angler educational events and activities for which fishing license exceptions are provided. Within 2 years of April 16, 1997, as many angler educational events and activities as possible approved pursuant to this section should be conducted by the volunteer instructors certified as provided in subsection (2).

History: En. Sec. 1, Ch. 275, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 275, L. 1997, provided that this section was effective on passage and approval. Approved April 16, 1997.

Part 9

License Agents

87-2-901. Appointment of license agents. The director may appoint license agents as needed to sell state hunting and fishing licenses and any permits or certificates prescribed by the department, according to rules adopted by the department.

History: En. Sec. 1, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 25, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 7, Ch. 421, L. 1977; R.C.M. 1947, 26-220.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Small business licensing coordination, Title 30, ch. 16.

Discrimination in license issuance prohibited, 49-3-204.

87-2-902. *(Temporary)* **Bond or security of agent and preferred claim of state for license money.** (1) An appointed license agent shall furnish a corporate surety bond or other security as required by department rule. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all money received from the sale of hunting and fishing licenses and any permits or certificates prescribed by the department. The license agent shall properly account for all unsold licenses, permits, and certificates annually on April 1 or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all money owed the state.

87-2-902. *(Effective March 1, 1998)* **Bond or security of agent and preferred claim of state for license money.** (1) An appointed license agent shall furnish a corporate surety bond or other security if required by department rule. The bond secures the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all money received from the sale of hunting and fishing licenses and any permits or certificates prescribed by the department. The license agent shall properly account for all unsold licenses, permits, and certificates annually on March 1 or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all money owed the state.

History: En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 26, Ch. 511, L. 1973; amd. Sec. 8, Ch. 421, L. 1977; R.C.M. 1947, 26-221; amd. Sec. 7, Ch. 44, L. 1979; amd. Sec. 1, Ch. 534, L. 1983; amd. Sec. 8, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1), in third sentence, substituted reference to March 1 for reference to April 1; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

87-2-903. *(Temporary)* **Compensation and duties of agents — penalty for late submission of license money.** (1) License agents, except salaried employees of the department, must receive for all services rendered the sum of 50 cents for each license, permit, or certificate issued. Each license agent shall submit to the department all duplicates of each class of licenses sold and shall accompany the duplicate licenses with all money received for the sale of the licenses, less the appropriate fee. The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the department.

(3) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged on late corporation license tax payments under 15-31-510(2) must be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

87-2-903. *(Effective March 1, 1998)* **Compensation, fees, and duties of agents — penalty for late submission of license money.** (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction.

(2) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission.

(3) Each license agent shall submit to the department copies of each license sold.

(4) The department may charge license agents appointed after March 1, 1998, an electronic license system installation fee not to exceed actual costs.

(5) The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(6) For purposes of this section, the term "transaction" includes the sale of any license, permit, or certificate prescribed by the department.

(7) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged on late corporation license tax payments under 15-31-510 must be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(8) The department may adopt rules necessary to implement this section.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959; amd. Sec. 27, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 9, Ch. 421, L. 1977; R.C.M. 1947, 26-222; amd. Sec. 15, Ch. 554, L. 1981; amd. Sec. 2, Ch. 534, L. 1983; amd. Sec. 17, Ch. 592, L. 1991; amd. Sec. 3, Ch. 92, L. 1993; amd. Sec. 9, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (1), after "services rendered", substituted "a commission of 50 cents for each transaction" for "the sum of 50 cents for each license, permit, or certificate issued" and deleted second sentence that read: "Each license agent shall submit to the department all duplicates of each class of licenses sold and shall accompany the duplicate licenses with all money received for the sale of the licenses, less the appropriate fee"; inserted (2) through (4) setting out additional conditions applicable to license agents; in (6), after "term", substituted "transaction" for "license", after "includes" inserted "the sale of", and before "certificate" substituted "or" for "and"; in (7), after "15-31-510", deleted "(2)"; and inserted (8) allowing the adoption of rules. Amendment effective March 1, 1998.

87-2-904. Nontransferability of appointments — revocation and oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this part or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses and for other permits and certificates prescribed by the department.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969; amd. Sec. 10, Ch. 421, L. 1977; R.C.M. 1947, 26-223; amd. Sec. 8, Ch. 44, L. 1979.

Part 10

Interstate Fishing Privileges

87-2-1001. *(Temporary)* **Reciprocal fishing privileges of licensees of bordering states.** (1) Any person who is properly licensed to fish in a state which borders the state of Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond, or body of water in Montana that lies within or partly within 10 miles of the boundaries of this state when such water is declared to be open to fishing by the department; provided, however, that such bordering state grants the same or similar privileges in any such body or bodies of water or in all lakes, reservoirs, ponds, or bodies of water similarly defined within its boundaries to holders of valid Montana fishing licenses and provided further that such state enters into a reciprocal agreement with Montana setting forth terms as provided by this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing such

reciprocal fishing privileges upon any body or bodies of water as described above. Such agreements may include provisions by which each state shall honor the license of the other state only when there is affixed to such license a stamp purchased from the honoring state, the charge for such stamp being set by mutual agreement of the states.

87-2-1001. *(Effective March 1, 1998)* **Reciprocal fishing privileges of licensees of bordering states.** (1) Any person who is properly licensed to fish in a state that borders Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond, or body of water in Montana that lies within or partly within 10 miles of the boundaries of Montana when the water is declared to be open to fishing by the department if the bordering state grants the same or similar privileges in any body or bodies of water or in all lakes, reservoirs, ponds, or bodies of water similarly defined within its boundaries to holders of valid Montana fishing licenses, and if the bordering state enters into a reciprocal agreement with Montana setting forth terms as provided by this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing reciprocal fishing privileges upon any body or bodies of water as described in subsection (1). A reciprocal agreement may include provisions by which each state shall honor the license of the other state only when a valid reciprocal license is purchased from the honoring state, the charge for the reciprocal license being set by mutual agreement of the states.

History: En. Sec. 1, Ch. 14, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-225; amd. Sec. 10, Ch. 187, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 187 in (2), in second sentence after "only when", substituted "a valid reciprocal license is" for "there is affixed to such license a stamp" and near end substituted "the reciprocal license" for "such stamp"; and made minor changes in style. Amendment effective March 1, 1998.

Cross-References

Exemption from motorboat numbering provisions for boats numbered in another state, 23-2-514.

Boating rules, 23-2-523, 23-2-526, 23-2-529.

Navigable waters, 85-1-112.

87-2-1002. Regulation of devices and equipment used under reciprocal privilege. The department may by regulation authorize use of fishing devices and equipment by properly licensed fishermen of both states, unless otherwise prohibited by Montana law, in waters forming the subject of such agreements.

History: En. Sec. 2, Ch. 14, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-226.

87-2-1003. Bodies of water subject to reciprocal privileges. It is the primary purpose of this part to provide a method whereby the fishing opportunities afforded upon any part of any body of water located within or partly within 10 miles of the boundaries of this state may be mutually enjoyed by the residents of Montana and the residents of such adjoining states, and it is not intended to cover the waters of rivers or streams.

History: En. Sec. 3, Ch. 14, L. 1965; R.C.M. 1947, 26-227.

87-2-1004. Rules to implement reciprocal agreements. The department is authorized to establish rules for the purpose of implementing agreements established under 87-2-1001. It is unlawful to violate any orders or rules promulgated by the department under this part.

History: **En. Sec. 4, Ch. 14, L. 1965; amd. Sec. 30, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-228.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Suretyship, Title 28, ch. 11, part 4.

CHAPTER 3

RESTRICTIONS AND REGULATIONS

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Chapter Cross-References

Penalty provisions, 87-1-102.

Part 1
General Provisions

87-3-101. General restrictions. Except as provided in 87-2-803(4), it is unlawful for anyone to hunt or attempt to hunt any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-202, in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight, spotlight or other artificial light, trap, snare (except as allowed in 87-3-127 and 87-3-128), salt lick, or bait.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301((1)(a) part); amd. Sec. 2, Ch. 214, L. 1985; amd. Sec. 3, Ch. 416, L. 1985; amd. Sec. 152, Ch. 370, L. 1987; amd. Sec. 26, Ch. 417, L. 1995.

Cross-References

Creating hazard, 45-8-113.

Shooting from or across highway, 61-8-369.

Trapping licenses, Title 87, ch. 2, part 6.

Disabled persons, 87-2-803.

87-3-102. Waste of fish or game. (1) A person who is responsible for the death of a mountain lion commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion, commits the offense of waste of game if the person:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, game bird, or game fish suitable for food commits the offense of waste of game if the person:

(a) purposely or knowingly transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of waste of game may be fined not less than $50 or more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; re-en. Sec. 3696, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch.

162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(1); amd. Sec. 5, Ch. 277, L. 1991; amd. Sec. 4, Ch. 263, L. 1995.

Cross-References

Grizzly as state animal, 1-1-508.

Disposition of seized grizzly bears, 87-1-511.

Registration for sale of certain grizzly bears, 87-3-110.

Wasting of fur-bearing animals, 87-3-506.

Possession of game by merchants, hotelkeepers, or restaurant keepers, 87-4-702.

87-3-103. Limit on number of game animals hunted or killed. It shall be unlawful and a misdemeanor for any person to attempt to kill, take, shoot, or capture or to kill, take, hunt, shoot, or capture more than one game animal of any one species in any one license year unless the killing of more than one game animal of such species has been authorized by regulations of the department.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(2); amd. Sec. 6, Ch. 277, L. 1991.

87-3-104. Unlawful to hunt or fish during closed season. It is unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish to attempt to hunt or to hunt any game animal or game bird or to fish for or catch any fish.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(3); amd. Sec. 7, Ch. 277, L. 1991; amd. Sec. 27, Ch. 417, L. 1995.

Cross-References

Tagging or declaration requirements for meat stored in rental lockers, 50-50-401.

Fixing of seasons and bag limits, 87-1-304.

Unlawful to take except during prescribed period, 87-2-103.

Violation of closed season on game birds, 87-3-402, 87-3-403.

87-3-105. Unlawful to import for introduction or to introduce or transplant wildlife. Except as provided in 87-5-703, it is unlawful for any person to import for introduction or to transplant or introduce any wildlife into the state of Montana unless done in accordance with the provisions of Title 87, chapter 5, part 7.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(2); amd. Sec. 1, Ch. 624, L. 1985.

Cross-References

Importation, introduction, and transplantation of wildlife, Title 87, ch. 5, part 7.

87-3-106. Hunting and fishing prohibited in fire-danger areas. (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of natural resources and conservation, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed while the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may

adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered.

History: **En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973; amd. Sec. 1, Ch. 178, L. 1975; R.C.M. 1947, 26-345; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 488, Ch. 418, L. 1995.**

Cross-References

Fixing of seasons, 87-1-304.

87-3-107. Use of snare lawful under certain conditions. (1) It is lawful to use a snare trap for the purpose of snaring a fur-bearing animal, a predatory animal, or a nongame species under the following conditions:

(a) A snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps must be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section.

History: **En. Sec. 1, Ch. 23, L. 1933; re-en. Sec. 3725.1, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1974; amd. Sec. 1, Ch. 149, L. 1977; R.C.M. 1947, 26-504; amd. Sec. 28, Ch. 417, L. 1995.**

Cross-References

Definition of enter or remain unlawfully, 45-6-201.

Penalty for failure to acquire landowner permission, 45-6-203, 87-1-102.

Metal tags required on traps, 87-3-504.

87-3-108. Restrictions on use of reproduced sounds. It is unlawful to use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife, except predatory animals and those birds not protected by state or federal law.

History: **En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(1)(b).**

87-3-109. Attempting to take simulated wildlife decoy — penalty. (1) It is unlawful for a person to discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) Upon conviction, the penalty for attempting to hunt a simulated wildlife decoy is the same as prescribed for the state statute or commission rule violated during the attempted hunting of the actual wildlife being simulated.

(3) In addition to any other penalty, a person convicted under this section shall pay restitution of $50 to the department for the repair of damages to simulated wildlife decoys.

History: En. Sec. 1, Ch. 309, L. 1991; amd. Sec. 29, Ch. 417, L. 1995.

87-3-110. Registration for sale of certain grizzly bears. (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount thereof may sell it if it has been registered with the department in the manner and upon forms provided by the department. The registration form must specifically describe the grizzly bear or the hide, head, or mount thereof and must accompany it upon any sale.

(2) Bears or parts thereof may be registered as follows:

(a) Before January 1, 1986, any lawfully killed grizzly bear or part thereof may be registered.

(b) On or after January 1, 1986, bears lawfully killed in Montana may be registered within 10 days after the date of kill, and bears lawfully killed outside Montana may be registered within 3 months after the date of kill upon presentation of proof of lawful kill.

(3) Registration under this section does not legalize any prior illegal act, such as the unlawful killing or theft of a grizzly bear or part thereof.

History: En. Sec. 5, Ch. 540, L. 1985.

Cross-References

Disposition of seized grizzly bears, 87-1-511.

Waste of fish or game, 87-3-102.

Possession of game by merchants, hotelkeepers, or restaurant keepers, 87-4-702.

87-3-111. *(Temporary)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or a different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed;

(d) the possession, transportation, sale, or purchase of the bones of an elk, antelope, moose, or deer that has been lawfully killed or that has died of natural causes; or

(e) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. *(Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)*

87-3-111. *(Effective July 1, 2003)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or a different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed; or

(d) the possession, transportation, sale, or purchase of the bones of an elk or deer that has been lawfully killed or that has died of natural causes.

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R.C.M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927; re-en. Sec. 3742,

R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1939; amd. Sec. 2, Ch. 22, L. 1941; amd. Sec. 24, Ch. 224, L. 1947; amd. Sec. 1, Ch. 146, L. 1955; R.C.M. 1947, 26-806; amd. Sec. 1, Ch. 92, L. 1981; amd. Sec. 2, Ch. 540, L. 1985; amd. Sec. 2, Ch. 409, L. 1989; amd. Sec. 8, Ch. 277, L. 1991; amd. Sec. 3, Ch. 329, L. 1991; amd. Sec. 1, Ch. 153, L. 1993; amd. Sec. 1, Ch. 116, L. 1995; amd. Sec. 1, Ch. 262, L. 1995.

Cross-References

Restrictions on possession of wild animals — rabies control, Title 50, ch. 23, part 1.

Disposition of seized grizzly bears, 87-1-511.

Felony sale or possession of wildlife — penalty, 87-3-118.

Unlawful to sell spawn, 87-4-601.

87-3-112. Possession of unlawfully killed animals and of unlawful fishing implements. (1) The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that the person or persons in whose possession the same are found have killed, caught, or taken the same. The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession the same are found were using the same to fish.

(2) It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were unlawfully killed, captured, or taken. No person may unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R.C.M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931; re-en. Sec. 3725, R.C.M. 1935; amd. Sec. 18, Ch. 224, L. 1947; amd. Sec. 40, Ch. 9, L. 1977; R.C.M. 1947, 26-503.

Cross-References

Unlawful to possess net or seine, 87-3-205.

Unlawful to use explosives or poisons in taking fish, 87-3-206.

87-3-113. Removal of illegally taken animals or parts of animals from state. It is unlawful for any person or persons to possess or to ship or take out of the state any illegally taken game or nongame birds, fish, game animals, fur-bearing animals, the skins of fur-bearing animals, or any parts thereof, whether taken within or coming from without the state.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R.C.M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; re-en. Sec. 3730, R.C.M. 1935; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963; amd. Sec. 42, Ch. 9, L. 1977; R.C.M. 1947, 26-701.

87-3-114. Labeling of packages. All shippers of fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals or predatory animals, or parts thereof are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. The label shall be securely attached to the address of the package and shall plainly indicate the names and addresses of the consignor and consignee and the complete contents of the package.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R.C.M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927; re-en. Sec. 3733, R.C.M. 1935; amd. Sec. 20, Ch. 224, L. 1947; amd. Sec. 43, Ch. 9, L. 1977; R.C.M. 1947, 26-704.

87-3-115. Violation by carriers. No person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by 87-3-114. All game or nongame birds, fish, game animals, fur-bearing animals, or parts thereof had in possession or which have been shipped or are being transported in violation of any of the provisions of 87-3-113 through 87-3-115 shall be seized, confiscated, and disposed of as provided by law.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R.C.M. 1921; amd. Sec. 26, Ch. 59, L. 1927; re-en. Sec. 3734, R.C.M. 1935; amd. Sec. 21, Ch. 224, L. 1947; amd. Sec. 44, Ch. 9, L. 1977; R.C.M. 1947, 26-705.

87-3-116 reserved.

87-3-117. Definitions of lawfully taken wildlife and unlawfully taken wildlife. As used in 87-3-118 and this section, the following definitions apply:

(1) "Lawfully taken wildlife" means wildlife, as defined in 87-5-102, that is taken or possessed by hunting, fishing, or trapping in conformance with this title and the regulations adopted by the commission and the department under authority of this title.

(2) "Unlawfully taken wildlife" means wildlife that is not lawfully taken wildlife.

History: En. Sec. 1, Ch. 329, L. 1991.

87-3-118. Felony sale or possession of wildlife — penalty. (1) A person commits the offense of sale of unlawfully taken wildlife if the person purposely or knowingly:

(a) sells, barters, purchases, or exchanges unlawfully taken wildlife for anything of value; or

(b) offers to sell, barter, purchase, or exchange unlawfully taken wildlife for anything of value.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than $1,000 if the person purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than $1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) (a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:

(i) sells, barters, purchases, or exchanges wildlife for anything of value;

(ii) attempts to sell, barter, purchase, or exchange wildlife for anything of value;

(iii) transports, causes to be transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.

(b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than $1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.

(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total.

(4) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than $1,000.

(5) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction.

History: En. Sec. 2, Ch. 329, L. 1991; amd. Sec. 30, Ch. 417, L. 1995.

87-3-119 and 87-3-120 reserved.

87-3-121. Conditions for award of prizes. (1) It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, fur-bearing animals, or any bird or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.

(2) The commission shall adopt rules to regulate contests by a person, firm, corporation, association, or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission's rules must be based on the commission's duty under Title 87 to protect, preserve, and propagate fish in the state.

(3) This section shall not be construed to prohibit the award of prizes for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935; re-en. Sec. 3744.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1974; R.C.M. 1947, 26-809; amd. Sec. 1, Ch. 346, L. 1987.

Cross-References

Fixing of bag and possession limits, 87-1-304.

Contests based on size of game animals unlawful, 87-3-307.

87-3-122. Repealed. Sec. 1, Ch. 206, L. 1991.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-215(1), (2), (4).

87-3-123. Use of silencers or mufflers on firearms forbidden. No person may take into a field or forest or have in his possession while out hunting any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(3).

87-3-124. Restrictions on hunting with dogs. (1) (a) Except as provided in 87-3-127 and subsection (2) of this section, a person may not chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog or dogs. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses any dog attacking or killing hooved game animals may destroy that dog without criminal or civil liability.

(2) The commission has authority to allow and regulate the use of dogs for hunting and chasing mountain lion and bobcat.

History: (1)En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; Sec. 26-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 184, L. 1971; amd. Sec. 4, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-303.5, R.C.M. 1947; R.C.M. 1947, 26-301(part (5)(a)), (5)(b), 26-303.5; amd. Sec. 1, Ch. 43, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 43 in (1)(a), after "87-3-127", inserted "and subsection (2) of this section"; in (2), at beginning, substituted "commission has" for "department shall have" and after "hunting" inserted "and chasing"; and made minor changes in style. Amendment effective March 12, 1997.

87-3-125. Restrictions on use of motor vehicles while hunting. (1) No person, while hunting game animals or game birds, may use a motor-driven vehicle other than on an established road or trail unless he has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission. After the retrieval, the motor-driven vehicle is to be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

(2) No person, while hunting game animals or game birds, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or

attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle.

(3) No person, while hunting game animals or game birds, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the landowner and is in possession of the hunter.

(4) It is unlawful for a person to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state, providing that this subsection does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(5) The restrictions in subsections (1) through (3) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(8), (9).

Cross-References

Landowner permission, 45-6-201, 87-3-304.

87-3-126. Restrictions on use of aircraft or boats. (1) No game birds or game or fur-bearing animals may be killed, taken, or shot at from any aircraft including helicopters; nor may any aircraft or helicopter be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals; nor may any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

(2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location thereof to any person on the ground by means of any air-to-ground communication signal or device whatsoever as an aid to hunting or pursuing wildlife.

(3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports which have been established on private property or which have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and

supplies. The provisions of this subsection do not apply during emergency situations or when search and rescue operations are being conducted or for predator control as permitted by the department of livestock.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(2).

Cross-References

Department of Livestock predatory animal control program, Title 81, ch. 7, part 1.

87-3-127. Taking of stock-killing animals. (1) Livestock owners or employees of the department or the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, stock-killing mountain lions, and stock-killing bobcats. Other means of taking stock-killing bears, stock-killing mountain lions, and stock-killing bobcats may be used except the use of the deadfall.

(2) Traps used in capturing bears shall be inspected twice each day with the inspections 12 hours apart.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(part (5)(a)).

Cross-References

Restrictions on hunting with dogs, 87-3-124.

87-3-128. Exceptions — department personnel. The provisions of this chapter relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or to any employee thereof while acting within the scope and course of the powers and duties of the department.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(10); amd. Sec. 9, Ch. 44, L. 1979.

87-3-129. Exception in cases of extreme hunger. When it is shown that any violation of the provisions of this title was for the purpose of preventing great suffering by hunger of any person which could not otherwise have been avoided, the provisions of this title shall not apply to the case.

History: **En. Sec. 79, Ch. 173, L. 1917; re-en. Sec. 3758, R.C.M. 1921; re-en. Sec. 3758, R.C.M. 1935; amd. Sec. 25, Ch. 9, L. 1977; R.C.M. 1947, 26-1006.**

87-3-130. Taking of wildlife to protect persons or livestock. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this chapter if the wildlife is molesting, assaulting, killing, or threatening to kill a person or livestock. A person who so takes wildlife protected by this chapter shall notify the department within 72 hours.

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes.

(3) As used in this section, "livestock" includes ostriches, rheas, and emus.

History: **En. Sec. 1, Ch. 306, L. 1981; amd. Sec. 13, Ch. 206, L. 1995; amd. Sec. 3, Ch. 540, L. 1995.**

Cross-References

Taking of publicly owned wild buffalo or bison on private property, 81-2-121.

Crop damage by wild animals, 87-1-225, 87-1-226, 87-1-304.

Permit for removal of beaver and dams, 87-3-501.

87-3-131 through 87-3-134 reserved.

87-3-135. Restrictions on use of archery equipment. A person may not, while hunting or fishing, use archery equipment that has been prohibited by rule of the commission.

History: **En. Sec. 2, Ch. 22, L. 1991.**

Cross-References

Powers of Fish, Wildlife, and Parks Commission, 87-1-301.

87-3-136 through 87-3-140 reserved.

87-3-141. Definitions. As used in 87-3-141 through 87-3-144, the following definitions apply:

(1) "Fishing" means the lawful means of angling or fishing as defined in 87-2-120.

(2) "Taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal.

(3) "Wild animal" means a game animal, migratory game bird, upland game bird, fur-bearing animal, or predatory animal, as defined in 87-2-101, or a fish.

History: **En. Sec. 1, Ch. 492, L. 1987; amd. Sec. 1, Ch. 453, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 453 inserted definition of fishing; in definition of wild animal, after "game animal", inserted "migratory game bird, upland game bird" and at end inserted "or a fish"; and made minor changes in style.

87-3-142. Harassment prohibited. (1) A person may not intentionally interfere with the lawful taking of a wild animal or fishing by another.

(2) A person may not, with intent to prevent or hinder its lawful taking or its capture, disturb a wild animal or engage in an activity or place in its way

any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal.

(3) A person may not disturb an individual engaged in the lawful taking of a wild animal or fishing with intent to prevent the taking of the animal or the capture of the fish.

(4) This section does not prohibit a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment. This section does not prohibit or curtail normal landowner operations or lawful uses of water.

History: En. Sec. 2, Ch. 492, L. 1987; amd. Sec. 2, Ch. 453, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 453 in (1) and (3), after "animal", inserted "or fishing"; in (2), after "taking", inserted "or its capture"; in (3), after "intent to", deleted "dissuade the individual or otherwise" and at end inserted "or the capture of the fish"; in (4) inserted second sentence concerning normal operations and lawful uses of water; and made minor changes in style.

87-3-143. Penalty. A person convicted of a violation of 87-3-142 is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment not to exceed 30 days, or both. A person convicted of a second or subsequent violation of 87-3-142 is punishable by a fine not to exceed $1,000 or imprisonment for a term not to exceed 1 year, or both.

History: En. Sec. 3, Ch. 492, L. 1987; amd. Sec. 4, Ch. 589, L. 1993.

87-3-144. Injunction. A court of general jurisdiction may enjoin conduct in violation of 87-3-142 upon petition by a person affected or who reasonably may be affected by such conduct and upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

History: En. Sec. 4, Ch. 492, L. 1987.

Part 2

Fish

87-3-201. Department control over fish hatcheries. The department has full control of all state fish hatcheries and is responsible for their construction, maintenance, and operation. All that construction work done under contract or otherwise shall be done under control and supervision of the director. The department shall administer the taking and collecting of all spawn, the hatching of all spawn and eggs, and the rearing, propagation, and distribution of fry, fingerlings, and fish. The department may purchase as many eyed eggs as are necessary to keep the hatcheries of the state supplied with eggs and in full operation. The department shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply the hatcheries and for that purpose may build, equip, and use fish traps and nets at any time of the year in all public waters. The department may purchase the eyed eggs of fish not propagated in this state for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R.C.M. 1921; amd. Sec. 10, Ch. 192, L. 1925; re-en. Sec. 3666, R.C.M. 1935; amd. Sec. 4, Ch. 81, L. 1951; amd. Sec. 15, Ch. 511, L. 1973; R.C.M. 1947, 26-117.

Cross-References

Acquisition, importation, and propagation of fish, 87-1-221.

Nurseries, fish ladders, and rearing ponds, 87-1-222.

87-3-202. Supervision over fish hatcheries by director. The director has general supervision over all fish hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. Distribution shall be under the direction of the department subject to an official order of the director. The director may exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R.C.M. 1921; amd. Sec. 8, Ch. 192, L. 1925; re-en. Sec. 3664, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965; amd. Sec. 14, Ch. 511, L. 1973; R.C.M. 1947, 26-115.

Cross-References

Nurseries, fish ladders, and rearing ponds, 87-1-222.

87-3-203. Restrictions on use of fish as bait. The department may prohibit the use of small fish as bait for catching fish in such waters as the department designates. It may promulgate such other rules as are necessary to insure an adequate supply of fish in such waters and may regulate fishing from boats or other floating devices and the use of fishing lures or baits in all waters of the state.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(1).

Cross-References

Boating regulations, 23-2-504, 87-1-303.

Operation of boats near persons fishing, 23-2-525.

87-3-204. Restrictions on fishing methods. (1) No game fish may be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those

herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

(6) Game fish shall be taken only by angling; that is, by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under such rules and regulations as the fish, wildlife, and parks commission may prescribe;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified;

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish, wildlife, and parks commission may prescribe; or

(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod.

History: Ap. p. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; Sec. 26-301, R.C.M. 1947; Ap. p. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R.C.M. 1921; amd. Sec. 16, Ch. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; re-en. Sec. 3714, R.C.M. 1935; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971; amd. Sec. 36, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-332, R.C.M. 1947; R.C.M. 1947, 26-301(part (1)(a)), (6), (7), 26-332; amd. Sec. 1, Ch. 50, L. 1979; amd. Sec. 1, Ch. 267, L. 1983; amd. Sec. 1, Ch. 149, L. 1987; amd. Sec. 1, Ch. 211, L. 1989; amd. Sec. 2, Ch. 28, L. 1991.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Donation of paddlefish eggs for caviar production, 87-4-601.

Sale of whitefish netted or trapped in Kootenai, 87-4-601.

87-3-205. Unlawful to possess net or seine — exceptions. (1) It is unlawful for any person or persons to have in their possession or under their control any seine, net, or other similar device for capturing fish. A seine or net found in any vehicle, at the camp, or on the premises of any person shall be prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying said camp or premises.

(2) Nothing contained herein shall apply to:

(a) the owners of private fish ponds, as defined under the statute;

(b) a person or persons having unexpired seine or net license, as provided for in the statutes of Montana;

(c) the use, by any person, of a landing net in connection or in addition to pole, line, and hooks in fishing for game fish; or

(d) the possession of traps, seines, or nets where found in the vicinity of any waters which the department has designated within the state where traps, seines, or nets may be used for the taking of nongame fish and Dolly Varden trout, as provided for in the statutes of Montana.

History: **En. Sec. 25, Ch. 173, L. 1917; re-en. Sec. 3716, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1933; re-en. Sec. 3716, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-334.**

Cross-References

Seining license, 87-4-602.

87-3-206. Unlawful to use explosives or poisons in taking fish. (1) If any person or persons shall use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison or other deleterious substance or have any of the same in his possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

(2) The provisions of this section shall not apply to anyone duly authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

History: **En. Sec. 26, Ch. 173, L. 1917; re-en. Sec. 3717, R.C.M. 1921; amd. Sec. 24, Ch. 192, L. 1925; amd. Sec. 1, Ch. 82, L. 1933; re-en. Sec. 3717, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1949; amd. Sec. 1, Ch. 114, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-335.**

Cross-References

Taking fish for scientific purposes, 87-2-806.

Taking of endangered species for educational, scientific, or other purposes, 87-5-109.

87-3-207. Unlawful to place caged fish in public waters — exception. It shall be unlawful for any person, firm, or corporation to place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by department regulation.

History: **En. Sec. 1, Ch. 126, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-813.**

87-3-208. Regulation of placing of caged fish. The department shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use, and the introduction of disease.

History: **En. Sec. 2, Ch. 126, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-814.**

87-3-209. Intrastate movement of diseased fish or eggs unlawful. It is unlawful to move live or dead salmonid fish or eggs from one in-state location to another when the fish or eggs are known to be infected with fish pathogens specified by the department as posing a threat to fisheries without written department approval.

History: **En. Sec. 2, Ch. 376, L. 1989.**

87-3-210. Permit required for importation of nonsalmonid fish or eggs. Except when intended for use in home or office aquariums, importations of live nonsalmonid fish or eggs must be accompanied by a permit as described for salmonids in 87-3-221(2). The permit may require that the importation be inspected and approved by a department biologist prior to release or placement.

History: **En. Sec. 4, Ch. 376, L. 1989.**

Cross-References

Importation permits and health certificates for animals, Title 81, ch. 2, part 7.

87-3-211 through 87-3-220 reserved.

87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit. (1) It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless the importations are shipped direct from the source to destination and a written certification that the source is free of all fish pathogens specified by the department as posing a threat to existing fisheries accompanies the shipment. Certification must be made by a fish pathologist approved by the director. Certification of the source may be by inspection conducted annually or at such other times as the director may order.

(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations present no substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in his other permit or permits. It is unlawful to import live salmonid fish or eggs into Montana without first obtaining the permit required by this subsection or to violate any conditions of the permit.

History: **En. Sec. 1, Ch. 10, L. 1969; amd. Sec. 1, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1701; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 376, L. 1989.**

Cross-References

Importation permits and health certificates for animals, Title 81, ch. 2, part 7.

87-3-222. When certification unnecessary. (1) Nothing in 87-3-221 through 87-3-224 or 87-3-209 may restrict the importation and transportation of dead salmonid fish or eggs when the fish or eggs have been processed or prepared in a manner that kills those fish pathogens specified by the department as posing a threat to fisheries.

(2) Dead salmonid fish or eggs transported into Montana for processing or caught wild are exempt from the requirement for certification. However, it is unlawful to discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems.

History: En. Sec. 2, Ch. 10, L. 1969; amd. Sec. 2, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1702; amd. Sec. 3, Ch. 376, L. 1989.

87-3-223. Authorization for rules and personnel. The department may promulgate such rules and regulations and may employ such personnel for testing and inspection as are necessary to carry out the provisions of 87-3-221 through 87-3-224.

History: En. Sec. 4, Ch. 10. L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1704.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-3-224. Enforcement. The cargo and vehicle involved in a violation of 87-3-209 and 87-3-210 or 87-3-221 through 87-3-223 may, at the option of the department, either be denied the right to proceed further within the state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of transportation of the provisions regarding importation of salmonid and nonsalmonid fish and eggs so that the department of transportation may enforce the provisions at ports of entry and checking stations under 60-2-303.

History: En. Sec. 5, Ch. 10, L. 1969; amd. Sec. 3, Ch. 37, L. 1974; amd. Sec. 52, Ch. 9, L. 1977; R.C.M. 1947, 26-1705; amd. Sec. 5, Ch. 376, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

87-3-225. Inspection, quarantine, and disinfection of fish hatcheries and culture facilities. (1) The department may conduct inspections for the presence of fish pathogens at any fish hatchery or culture facility. Inspections may be conducted at the request of the hatchery or facility or by order of the department. The expense of inspection must be paid by the hatchery or facility requesting the inspection or by the department when the inspection is ordered by the department.

(2) When a fish hatchery or culture facility is found to be contaminated or to contain fish or eggs infected with specified fish pathogens, the department may order appropriate action, including quarantine, destruction of infected fish or eggs, or disinfection of all or part of the hatchery or facility. An order for destruction of infected fish or eggs may not be issued unless the infection is confirmed by two laboratories. The owner of the hatchery or facility is liable for all costs and expenses associated with the cleanup and the disposition of infected fish or eggs. When destruction of eggs is ordered at a private facility

and the department has surplus eggs available, the department may replace the destroyed eggs without charge to the private facility.

History: En. Sec. 6, Ch. 376, L. 1989.

Cross-References

Construction and maintenance of fish hatcheries and fish ladders, 87-1-222.

87-3-226. Duty to report fish pathogens. A person, including the owner or custodian of a fish hatchery or culture facility, who has reason to suspect the presence of fish pathogens specified by the department as posing a threat to existing fisheries shall immediately give notice to the department.

History: En. Sec. 7, Ch. 376, L. 1989.

87-3-227. Civil liability. A person, firm, or corporation that violates any provision of this part pertaining to fish disease or rules or orders of the department is liable for damages caused by the violation. The damages may be recovered by the person, firm, or corporation damaged or by the department on behalf of the public in a civil action in a court of competent jurisdiction. All money collected by the department under this section must be deposited in the state special revenue fund as provided in 87-1-601(1).

History: En. Sec. 8, Ch. 376, L. 1989.

Part 3
Game Animals

87-3-301. Shotgun loads regulated by department. A person may not use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(4); amd. Sec. 2, Ch. 517, L. 1987; amd. Sec. 31, Ch. 417, L. 1995.

Cross-References

Use of specified hunting arms authorized, 87-1-304.

87-3-302. Colored garments required on big game hunters. (1) It is unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without the person wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) "Hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to any person hunting with a bow and arrow during the special archery season.

(4) The department shall make rules to implement this section.

(5) Any person convicted of a violation of any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $10 or more than $20.

History: (1) thru (4)En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971; amd. Sec. 1, Ch. 20, L. 1974; amd. Sec. 10, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-302, R.C.M. 1947; (5)En. Sec. 2, Ch. 74, L. 1937; amd. Sec. 2, Ch. 20, L. 1974; Sec. 26-303, R.C.M. 1947; R.C.M. 1947, 26-302, 26-303.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Failure to assist injured person, 45-8-113.

87-3-303. Policy toward nonresident big game hunters. It shall be the policy of this state to protect and preserve game animals primarily for the citizens of this state and to avoid the deliberate waste of wildlife and destruction of property by nonresidents licensed to hunt in this state.

History: En. Sec. 1, Ch. 229, L. 1965; R.C.M. 1947, 26-303.1.

87-3-304. Landowner's permission required for big game hunting. Every resident and nonresident must have obtained permission of the landowner, lessee, or their agents before hunting big game animals on private property.

History: En. Sec. 3, Ch. 229, L. 1965; R.C.M. 1947, 26-303.3.

Cross-References

Failure to close previously unopened gate as criminal mischief, 45-6-101.

Definition of enter or remain unlawfully, 45-6-201.

Criminal trespass to property, 45-6-203.

Restriction on landowner liability to gratuitous permittee, 70-16-301, 70-16-302.

Hunting easements, 70-17-101, 70-17-102.

Landowner eligibility for game damage assistance — public hunting requirements, 87-1-225.

Use of snares and traps with permission of landowner, 87-2-604, 87-3-107.

Landowner permission to use motor vehicles, 87-3-125.

87-3-305. Unlawful to hunt deer within city or town boundaries. It is unlawful to hunt or attempt to hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state.

History: En. Sec. 2, Ch. 123, L. 1933; re-en. Sec. 3697.1, R.C.M. 1935; amd. Sec. 2, Ch. 465, L. 1977; R.C.M. 1947, 26-315; amd. Sec. 32, Ch. 417, L. 1995.

Cross-References

Firing firearms within city prohibited, 45-8-343.

87-3-306. Unlawful to destroy evidence of sex. It is unlawful for any person killing a big game animal within this state to destroy evidence of the sex of the big game animal so killed so as to make the determination of the sex thereof uncertain.

History: En. Sec. 16a, Ch. 238, L. 1921; amd. Sec. 3698, R.C.M. 1921; amd. Sec. 18, Ch. 192, L. 1925; re-en. Sec. 3698, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1947; amd. Sec. 1, Ch. 99, L. 1949; amd. Sec. 33, Ch. 9, L. 1977; R.C.M. 1947, 26-317.

87-3-307. Contests based on size of game animals unlawful. (1) Except as provided in this section, it is unlawful for any person, as defined in 87-2-101, to conduct or sponsor in any manner a contest in which a prize is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, having the longest body, or any similar contest based upon the size or weight of a game animal or part of a game animal.

(2) This section does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute.

History: En. Sec. 1, Ch. 133, L. 1961; amd. Sec. 47, Ch. 9, L. 1977; R.C.M. 1947, 26-811.

Cross-References

Fixing of bag and possession limits, 87-1-304.

Bag limit prizes, 87-3-121.

Part 4
Game Birds

87-3-401. Restrictions on rifles for bird hunting. Rifles may not be used to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder. The use of rifles to hunt or shoot wild turkey during the spring wild turkey season is prohibited.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(part(1)(a)); amd. Sec. 1, Ch. 194, L. 1995.

87-3-402. Unlawful to violate closed season on certain game birds. It is unlawful for any person to hunt or attempt to hunt any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey until the commission provides an open season on any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey.

History: En. Sec. 18, Ch. 238, L. 1921; re-en. Sec. 3700, R.C.M. 1921; amd. Sec. 10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192, L. 1925; amd. Sec. 14, Ch. 59, L. 1927; re-en. Sec. 3700, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 3, Ch. 465, L. 1977; R.C.M. 1947, 26-319; amd. Sec. 33, Ch. 417, L. 1995.

Cross-References

Fixing of seasons by Commission, 87-1-304.

Mourning dove as migratory game bird — season restricted, 87-2-101.

Misdemeanor to hunt during closed season, 87-3-104.

87-3-403. Migratory game birds — closed season and bag limits. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit, and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the department by proper action will adopt, advertise, and enforce such proclaimed regulations as may be applicable to the state of Montana. Any person or persons violating any provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law.

History: En. Sec. 20, Ch. 238, L. 1921; re-en. Sec. 3703, R.C.M. 1921; amd. Sec. 13, Ch. 77, L. 1923; amd. Sec. 16, Ch. 59, L. 1927; re-en. Sec. 3703, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1941; amd. Sec. 1, Ch. 113, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-320.

Cross-References

Importation permits and health certificates, Title 81, ch. 2, part 7.

Fixing of seasons by Commission, 87-1-304.

Mourning dove as migratory game bird — season restricted, 87-2-101.

87-3-404. Tagging of turkey. Every person who shall take or kill any turkey shall immediately thereafter attach to the leg of said turkey the proper tag which has been validated by the holder thereof by complying with instructions on said tag.

History: En. Sec. 2, Ch. 35, L. 1959; R.C.M. 1947, 26-511.

Cross-References

Wild turkey tags and fee, 87-2-403.

87-3-405. Failure to tag turkey. It is unlawful for any person who kills, captures, or possesses any wild turkey by authority of any turkey tag or permit to fail or neglect to attach his tag to the turkey or fail to validate his tag by filling out or punch marking the tag as required and fail to keep the tag attached while the same is possessed by him.

History: En. Sec. 3, Ch. 35, L. 1959; amd. Sec. 41, Ch. 9, L. 1977; R.C.M. 1947, 26-512.

Cross-References

Wild turkey tags and fee, 87-2-403.

Part 5
Fur-Bearing Animals

87-3-501. Open and closed season for fur-bearing animals — exception. (1) It is unlawful and a misdemeanor for a person to trap or hunt or attempt to trap or hunt any fur-bearing animal until the commission provides an open season on any fur-bearing animal. The furs and hides of fur-bearing animals legally taken during the open season may be possessed, bought, and sold at any time except as provided by law.

(2) When it is shown that muskrats or beaver are doing severe injury upon or are a menace to the structures, canal banks, or other works of an irrigation project or district or stock water pond, any employee or resident landowner on the project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of the project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the director a permit to do so, except that from June 1 to August 31, both dates inclusive, of each year a permit is not required.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(1st part); amd. Sec. 34, Ch. 417, L. 1995.

Cross-References

Property rights in wild animals, 70-2-111.

Destruction of beaver dams, 87-1-224.

License required, 87-2-103.

Registration for sale of certain grizzly bears, 87-3-110.

Unlawful to buy, sell, possess, or transport — exceptions, 87-3-111.

Sale of game in commercial trade, Title 87, ch. 4, part 7.

87-3-502. Repealed. Sec. 1, Ch. 275, L. 1983.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(2nd part).

87-3-503. Destruction of beaver and muskrat houses unlawful. It shall be unlawful and punishable, as in this part provided, for any person at any time to willfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver except that this shall not prohibit trapping in the house of muskrats when the commission shall authorize such trapping.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

Cross-References

Transfer of beaver from one stream to another in grazing districts, 76-16-107.

Destruction of beaver and beaver dams for protection of public health, 87-1-224.

87-3-504. Metal tags required on traps. Any person trapping fur-bearing animals or predatory animals for their pelts shall fasten a metal tag to all such traps bearing in legible English the name and address of the trapper, except that no tag shall be required on traps used by landowners trapping with permit on their own land and irrigation ditch right-of-way contiguous to the land.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

Cross-References

Use of snare traps — tagging, 87-3-107.

87-3-505. Penalty. Any person violating any of the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

Cross-References

Fish and game violations generally, 87-1-102.

87-3-506. Wasting of fur-bearing animals. (1) A person who fails to pick up traps or snares at the end of the trapping season or attends his traps or snares so that fur-bearing animals are wasted is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(2) The department of fish, wildlife, and parks shall enforce the provisions of this section.

(3) Federal, state, and county predator control programs are exempt from this section.

History: **En. Secs. 1, 2, 3, Ch. 629, L. 1979.**

Cross-References

Waste of fish or game, 87-3-102.

87-3-507. Unlawful to disturb traps or trapped animals belonging to another — exception. (1) No person may destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by him if such snare would endanger livestock.

(2) This section does not apply to a law enforcement officer acting within the scope of his duty.

History: **En. Sec. 1, Ch. 495, L. 1983.**

Cross-References

Criminal mischief, 45-6-101.

Theft, 45-6-301.

CHAPTER 4

COMMERCIAL ACTIVITIES

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87-4-506. Revocation of license or permit and reissuance.
87-4-507 through 87-4-520 reserved.
87-4-521. Duration of season.
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87-4-603. Fish pond license for artificial lake or pond — records.
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87-4-605. Records and report of whitefish sales by fishing license holders.
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87-4-607. Revocation of fish pond license.
87-4-608. Unlawful taking of crayfish — penalty.
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87-4-907. License nontransferable.
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87-4-911. Sale of meat.
87-4-912. Records and reporting.
87-4-913. Rulemaking.
87-4-914. Release of birds.
87-4-915. Field trials — permits.
87-4-916. Revocation of license.

Part 10 — Fur Farms

87-4-1001. Definitions.
87-4-1002. Fur farm license required — applicability.
87-4-1003. Application for license.
87-4-1004. License and renewal fee — deposit.
87-4-1005. Term of license — conditions — changes in operation.
87-4-1006. License nontransferable.
87-4-1007. Inspection.
87-4-1008. Furbearers as private property.
87-4-1009. Transportation of furbearers.
87-4-1010. Sale of furs.
87-4-1011. Records and reporting.
87-4-1012. Rulemaking.
87-4-1013. Revocation of license.
87-4-1014. Unlawful capture.

Chapter Cross-References

Small business licensing coordination center, Title 30, ch. 16, part 2.

Licensing and regulation of outfitters and guides, Title 37, ch. 47.

Penalty provisions, 87-1-102.

Part 1

Outfitters and Guides (Renumbered and Repealed. Sec. 11, 12, Ch. 528, L. 1987)

Part Compiler's Comments

Sections Renumbered and Repealed:

87-4-101. Renumbered 37-47-101.
87-4-102. Renumbered 37-47-102.
87-4-103. Renumbered 37-47-404.
87-4-104. Renumbered 37-47-201.
87-4-105. Repealed. Sec. 12, Ch. 528, L. 1987.
87-4-106. Repealed. Sec. 12, Ch. 528, L. 1987.
87-4-107 through 87-4-120 reserved.
87-4-121. Renumbered 37-47-301.
87-4-122. Renumbered 37-47-302.
87-4-123. Renumbered 37-47-303.
87-4-124. Renumbered 37-47-304.
87-4-125. Renumbered 37-47-305.
87-4-126. Repealed. Sec. 11, Ch. 239, L. 1983.
87-4-127. Renumbered 37-47-306.
87-4-128. Renumbered 37-47-307.
87-4-129. Renumbered 37-47-308.
87-4-130. Renumbered 37-47-309.
87-4-131. Renumbered 37-47-310.
87-4-132. Renumbered 37-47-311.
87-4-133. Renumbered 37-47-312.
87-4-134 through 87-4-140 reserved.

87-4-141. Renumbered 37-47-341.
87-4-142. Renumbered 37-47-342.
87-4-143. Renumbered 37-47-343.
87-4-144. Repealed. Sec. 12, Ch. 528, L. 1987.
87-4-145 through 87-4-160 reserved.
87-4-161. Renumbered 37-47-401.
87-4-162. Renumbered 37-47-402.
87-4-163. Renumbered 37-47-403.

Histories of Repealed Sections:

87-4-105. En. Sec. 5, Ch. 221, L. 1971; amd. Sec. 39, Ch. 511, L. 1973; amd. Sec. 18, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-912; amd. Sec. 6, Ch. 545, L. 1981.

87-4-106. En. Sec. 6, Ch. 221, L. 1971; amd. Sec. 19, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-913; amd. Sec. 7, Ch. 545, L. 1981.

87-4-126. En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(6), (7); amd. Sec. 13, Ch. 545, L. 1981.

87-4-144. En. Sec. 14, Ch. 221, L. 1971; amd. Sec. 40, Ch. 511, L. 1973; amd. Sec. 24, Ch. 9, L. 1977; R.C.M. 1947, 26-921; amd. Sec. 21, Ch. 545, L. 1981.

Part 2
Taxidermists

Part Cross-References
Penalties cumulative, 87-1-102.

87-4-201. Taxidermist's license, fee, and penalty. A person who engages in conducting any taxidermy business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any of the dead bodies of any wildlife or any part thereof must first obtain from the director a taxidermist's license and pay an annual license fee of $15 therefor. Such person shall keep a written record of all the articles of wildlife in his possession or control, the kind and number of each, by whom owned, and the residence of owner, all the articles of wildlife shipped and to whom and where shipped. The above record shall be kept for as long as such articles remain in the possession of the licensee but in any event at least 5 years. These records shall be open to inspection by any state game warden at any reasonable time. In all cases of conviction of violation of this section, the license of the person convicted may be revoked by the court.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R.C.M. 1921; amd. Sec. 24, Ch. 77, L. 1923; re-en. Sec. 3751, R.C.M. 1935; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959; amd. Sec. 1, Ch. 10, L. 1974; amd. Sec. 48, Ch. 9, L. 1977; amd. Sec. 1, Ch. 129, L. 1977; R.C.M. 1947, 26-907.

Cross-References
Effect of failure to comply with licensing requirements, 7-21-2113.

Part 3
Fur Dealers

Part Cross-References
Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.
Fur farms, Title 87, ch. 4, part 10.

87-4-301. Fur dealers defined. (1) Any person or persons, firm, company, or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of any animal or animals designated by the laws of Montana as fur-bearing or predatory animals shall be deemed a fur dealer within the meaning of this part.

(2) If such fur dealer resides in or if his or its principal place of business is within the state of Montana, he or it shall be deemed a resident fur dealer. All other fur dealers shall be deemed nonresident fur dealers.

History: En. Sec. 1, Ch. 42, L. 1929; re-en. Sec. 3778.3, R.C.M. 1935; R.C.M. 1947, 26-1301.

87-4-302. Records and inspection. (1) A fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) the number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) the place where the skins or furs were killed or trapped and a separate record of all the skins or pelts as were killed or trapped outside this state;

(c) the trapping license number under which the furs or pelts were taken in cases where a trapper's license is required;

(d) the names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the director or any warden or any United States game warden and shall be preserved and accessible for 1 year after the expiration of any license granted to the fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929; re-en. Sec. 3778.4, R.C.M. 1935; amd. Sec. 47, Ch. 511, L. 1973; R.C.M. 1947, 26-1302.

87-4-303. Persons required to have fur dealer's license. A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state, secure a fur dealer's license from the director. No license is required for a hunter or trapper selling skins or pelts which he has lawfully taken or for a person not a fur dealer who purchases skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929; re-en. Sec. 3778.5, R.C.M. 1935; amd. Sec. 48, Ch. 511, L. 1973; R.C.M. 1947, 26-1303.

87-4-304. License classification and fees. (1) The following classes of licenses may be issued and the following fees charged for the licenses:

(a) resident fur dealer's license, $10;

(b) nonresident fur dealer's license:

(i) the same as the fee charged in the nonresident's state of residence for a Montana fur dealer seeking licensure in that state; or

(ii) if the nonresident's state does not issue a nonresident fur dealer's license, $50;

(c) fur dealer's agent's license, $10.

(2) A person who is employed by a resident or nonresident fur dealer as a traveling fur buyer is considered a fur dealer's agent. A fur dealer's agent's license may be issued to any person who is employed as a fur buyer by a licensed resident or licensed nonresident fur dealer, providing that it is the responsibility of each fur dealer and fur dealer's agent to have the proper license before buying or dealing in furs as defined in 87-4-301.

History: En. Sec. 4, Ch. 42, L. 1929; re-en. Sec. 3778.6, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1941; amd. Sec. 1, Ch. 188, L. 1945; R.C.M. 1947, 26-1304; amd. Sec. 1, Ch. 48, L. 1989; amd. Sec. 60, Ch. 16, L. 1991.

87-4-305. Issuance and expiration of licenses. The license required by this part shall be issued annually and shall expire on April 30 of each year, and no reduction in the fee charged for said license shall be made in any case where said license runs for less than 1 year.

History: En. Sec. 5, Ch. 42, L. 1929; re-en. Sec. 3778.7, R.C.M. 1935; R.C.M. 1947, 26-1305.

87-4-306. Violations. No person, firm, company, or corporation may violate any of the provisions of this part.

History: En. Sec. 6, Ch. 42, L. 1929; re-en. Sec. 3778.8, R.C.M. 1935; amd. Sec. 33, Ch. 224, L. 1947; amd. Sec. 51, Ch. 9, L. 1977; R.C.M. 1947, 26-1306.

Cross-References

Fish and game violations — penalties, 87-1-102.

Part 4

Game Farms

Part Cross-References

Minimum wage for game farm employees, 39-3-402, 39-3-404, 39-3-406.

Unemployment insurance coverage — agricultural labor, 39-51-205.

Reporting requirement when certain animals in captivity die, escape, or are otherwise disposed of, 87-1-231.

Tattoo records, 87-1-232.

Fee limitation for multiple licenses, 87-1-606.

87-4-401 through 87-4-405. Repealed. Sec. 51, Ch. 570, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

87-4-401. En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-402. En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-403. En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; R.C.M. 1947, 26-1201(part); amd. Sec. 2, Ch. 218, L. 1979.

87-4-404. En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-405. En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-406. Definitions. As used in this part, the following definitions apply:

(1) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families suidae, camelidae, or hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic

sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of game farm animals.

(4) "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

(5) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, or selling game farm animals or parts of game farm animals, as authorized under this part.

(6) "Game farm animal" means a privately owned caribou, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department.

(7) "Person" means an individual, firm, corporation, association, or partnership.

History: En. Sec. 1, Ch. 570, L. 1983; amd. Sec. 3, Ch. 540, L. 1985; amd. Sec. 1, Ch. 315, L. 1993; amd. Sec. 2, Ch. 503, L. 1995.

87-4-407. License required — penalty — seizure of illegally possessed animals. (1) A person may not operate a game farm in this state without first obtaining a game farm license from the department.

(2) A person who operates a game farm without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in 87-4-427(4).

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal.

History: En. Sec. 2, Ch. 570, L. 1983; amd. Sec. 2, Ch. 315, L. 1993.

Cross-References

Criteria for issuance of license, 87-4-426.

87-4-408. Jurisdiction. (1) The department has primary jurisdiction over game farms with regard to licensing, reports and recordkeeping, exterior fencing, classification of exotic species, removal of game animals under 87-4-410, inspection under 87-4-413, and enforcement of the functions listed in this subsection.

(2) The department of livestock has primary jurisdiction over game farms relating to marking, inspection, transportation, importation, quarantine, hold orders, interior facilities, and health and relating to the enforcement of the functions listed in this subsection.

History: En. Sec. 3, Ch. 570, L. 1983; amd. Sec. 1, Ch. 531, L. 1991; amd. Sec. 3, Ch. 503, L. 1995.

Cross-References

Livestock, Title 81.

Disease control, Title 81, ch. 2.

87-4-409. Application for license — limitations on issuance. (1) A person desiring to obtain a game farm license shall make written application to the department on forms provided by the department. The application shall specify:

(a) the applicant's name;

(b) the applicant's address;

(c) the name and address of the individual who will be the principal manager of the game farm;

(d) the exact legal description of the land upon which the game farm is to be located, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;

(e) the species of game farm animals proposed to be kept or reared on the game farm;

(f) the type of facilities contemplated and the location of perimeter fencing;

(g) the source from which the applicant intends to acquire the game animals;

(h) if the applicant is not a Montana resident, the name and address of a Montana resident designated by the applicant as the applicant's local agent;

(i) if the applicant is a corporation, the full names and addresses of all stockholders owning more than 10% of the stock in the corporation; and

(j) information demonstrating that the applicant is responsible.

(2) Within 30 days of receipt of an application, the department shall notify the applicant in writing whether the application:

(a) is in compliance and is accepted as complete; or

(b) is not in compliance and shall list any deficiencies that must be corrected before the application is in compliance. The department shall return any noncomplying application to the applicant, who may resubmit the application upon correction of the deficiencies.

(3) Within 120 days of the acceptance of a complete application, the department shall notify the applicant of its proposed decision to approve, approve with stipulations, or deny the application. If the department determines that the preparation of an environmental impact statement is required by Title 75, chapter 1, and by department rules adopted pursuant to the Montana Environmental Policy Act, then the department has an additional 180 days to act on the completed application. If required fencing has not been completed, the department shall approve the application subject to completion and approval of the fencing. If the application is denied or approved with stipulations, the department shall specify the reasons for denial or stipulations.

History: En. Sec. 4, Ch. 570, L. 1983; amd. Sec. 3, Ch. 315, L. 1993.

87-4-410. Removal of game animals. (1) If game animals are present on the land that is to be covered by a game farm license, the license must be issued but must be conditioned upon the applicant complying with this section.

(2) Before the fence surrounding any land to be covered by a game farm may be closed, all game animals must to the extent possible be driven from the land by the applicant, at the applicant's expense and under the observation of a representative of the department.

(3) If at the time the license is issued all game animals cannot be removed from the licensed land, the applicant and a representative of the department shall decide within 60 days the approximate number of remaining game animals of each indigenous species. This number is the "base number".

(4) The department may remove the base number of game animals from the game farm within 120 days from the date the number was determined.

(5) If the department decides not to remove the game animals or if some game animals were not successfully removed, the public must be granted access to harvest those game animals during a special hunt set for that purpose during the next regularly scheduled hunting season.

(6) After compliance with this section, any animals from the base number that remain and their progeny belong to the licensee. Under certain circumstances, a licensee may request a waiver from the identification and marking of animals in the base number on a licensed game farm.

History: En. Sec. 5, Ch. 570, L. 1983; amd. Sec. 4, Ch. 503, L. 1995.

87-4-411. License and renewal fees — deposit of fees. (1) The department shall charge an initial game farm license fee and an annual renewal fee based on the following scale:

(a) a game farm with 1 to 20 game farm animals, an initial license fee of $200 and an annual renewal fee of $50;

(b) a game farm with 21 to 60 game farm animals, an initial license fee of $300 and an annual renewal fee of $100; and

(c) a game farm with more than 60 game farm animals, an initial license fee of $400 and an annual renewal fee of $200.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

History: En. Sec. 6, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 315, L. 1993; amd. Sec. 5, Ch. 503, L. 1995.

Cross-References

Fee limitation for multiple licenses, 87-1-606.

87-4-412. Term of license — renewal — transferability. (1) A game farm license expires on January 31 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements.

(2) A game farm license for a specific facility is transferable with the consent of the department. The department's consent must be given if:

(a) the transferee meets the requirements of 87-4-426(1);

(b) the game farm and facilities are in compliance with requirements in place at the time the license was issued;

(c) the game farm is not under quarantine by the department of livestock;

(d) game farm animals to be transferred are not prohibited under this part and department rules; and

(e) the transfer is not proposed as a means to evade a requirement imposed on the licensee.

History: En. Sec. 7, Ch. 570, L. 1983; amd. Sec. 6, Ch. 315, L. 1993.

87-4-413. Inspection. (1) Upon receipt of an application for a game farm license, the department shall inspect the land proposed to be covered by the license.

(2) After issuance of a game farm license, the department may inspect the game farm or the licensee's game farm books on a scheduled basis or on such other reasonable basis as may be determined necessary.

History: En. Sec. 8, Ch. 570, L. 1983.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-414. Game farm animals as private property — source — marking. (1) All game farm animals lawfully possessed on a licensed game farm are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, handle, harvest, use, sell, or dispose of the game farm animals and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part.

(3) A licensee shall mark each game farm animal in a manner approved by the department of livestock, as required under subsection (4), and that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of game farm animals. The department of livestock shall require that all imported game farm animals are marked within 30 days of importation and that all other game farm animals are marked prior to January 1 of each year. Each game farm animal must be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) has an emblem owned and registered by the department of livestock that is embossed on each identification tag; and

(d) allows for the identification of game farm animals from a distance.

(5) Upon the request of a licensee, the department of livestock may grant a temporary waiver as to the time for identification and to the manner of identification if necessary to address a special circumstance.

(6) Game farm animals must be lawfully acquired by the licensee. A game farm animal may be kept only on a licensed game farm. A licensee who keeps a game farm animal owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee. Records and reports submitted by the licensee pursuant to 87-4-417 must identify any game farm animal kept by the licensee during the reporting period and the name and address of the owner or lessee.

(7) Except for importation permits and health certificates required under 81-2-703, laws applicable to game animals do not apply to game farm animals raised on a licensed game farm.

History: En. Sec. 9, Ch. 570, L. 1983; amd. Sec. 2, Ch. 531, L. 1991; amd. Sec. 7, Ch. 315, L. 1993; amd. Sec. 6, Ch. 503, L. 1995.

Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

Prohibition of possession of certain wild animals, 50-23-102.

Property rights in wild animals, 70-2-111.

Furbearers as private property, 87-4-1008.

87-4-415. Transportation, sale, and disposal of game farm animals — quarantine. (1) Prior to selling, transferring, transporting, or disposing of one or more game farm animals, the game farm licensee shall contact the department of livestock to request an inspection by a department of livestock designated agent for all game farm animals, except carnivores and omnivores. In the case of carnivores and omnivores, the game farm licensee shall contact the department to request an inspection by a department official. All dead game farm animals, except carnivores and omnivores, must be reported to the department of livestock within 1 working day of the discovery of the death.

(2) (a) Inspection under subsection (1), except inspection of carnivores and omnivores, must be conducted pursuant to 81-3-203(1) through (3) and must include the number, species, age, sex, and individual identification numbers of game farm animals transported or disposed of.

(b) A copy of the certificate of inspection must be provided by the department of livestock to the department within 10 days of the inspection.

(3) The department of livestock may quarantine or issue a hold order on any game farm animal pending inspection and health certification. The department shall advise the department of livestock regarding the importation or transportation of any game farm animal that the department reasonably believes may be infected with a disease specific to wildlife.

History: En. Sec. 10, Ch. 570, L. 1983; amd. Sec. 3, Ch. 531, L. 1991; amd. Sec. 8, Ch. 315, L. 1993; amd. Sec. 7, Ch. 503, L. 1995.

87-4-416. Sale of game parts, meats, and byproducts. (1) A game farm licensee may sell or otherwise dispose of the carcass, parts, or byproducts of a properly identified game farm animal taken from a game farm in accordance with the provisions of 87-4-415. A copy of the certificate of inspection must be attached to the carcass or container. Upon the attaching of the certificate of inspection, the carcass, parts, or byproducts of the game farm animal may be transported within the state to the transferee named on the certificate of inspection.

(2) The licensee may sell game farm animals for meat upon compliance with all applicable health laws.

History: En. Sec. 11, Ch. 570, L. 1983; amd. Sec. 9, Ch. 315, L. 1993.

87-4-417. Records and reporting — rules. (1) Each game farm licensee shall keep and maintain for 3 years accurate written records of all purchases, transfers, sales, births, and deaths of game farm animals, showing:

(a) the number of each species of game farm animal purchased by the game farm licensee and from whom purchased;

(b) the number of each species of game farm animal transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) individual identification of each game farm animal that was purchased, transferred, sold, or born or that died. However, a calf or fawn that dies prior to being marked pursuant to 87-4-414(4) need not be identified.

(2) Unless a different reporting frequency has been established pursuant to subsection (3), within 2 weeks after January 1 and July 1 of each year, the game farm licensee shall file a report with the department, showing the number and species of game farm animals that were on hand as of January 1 and July

1 and the number and species of game farm animals that escaped, that were bought, sold, transferred, recaptured, or born, or that died during the reporting period.

(3) The department may establish by rule the conditions under which the frequency of reporting requirements may be reduced to one report a year or increased to three reports a year. The department may establish by rule the conditions under which a licensee may submit an abbreviated report. In adopting those rules, the department shall consider the number of animals present on a game farm, the number of reported transactions during previous reporting periods, a history of accurate recordkeeping, and a historical absence of violations.

History: En. Sec. 12, Ch. 570, L. 1983; amd. Sec. 4, Ch. 531, L. 1991; amd. Sec. 10, Ch. 315, L. 1993; amd. Sec. 8, Ch. 503, L. 1995.

87-4-418. Unlawful capture. No person may capture, take, or otherwise acquire any game animal in this state for use on a game farm except as provided in 87-4-410.

History: En. Sec. 13, Ch. 570, L. 1983.

87-4-419. Escape from game farm — effect. (1) If a game farm animal escapes from a game farm, the game farm licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, the department may kill the animal. If recapture or killing of the animal is unsuccessful within a reasonable time, the animal becomes the property of the state.

(2) The department shall by rule adopt a definition of “reasonable time”, as used in this section, taking into consideration specific seasonal issues related to breeding and disease.

History: En. Sec. 14, Ch. 570, L. 1983; amd. Sec. 9, Ch. 503, L. 1995.

87-4-420. Taxation. All game farm animals raised on a game farm may be assessed as personal property of the owner.

History: En. Sec. 15, Ch. 570, L. 1983.

87-4-421. Repealed. Sec. 16, Ch. 315, L. 1993.

History: En. Sec. 16, Ch. 570, L. 1983.

87-4-422. Rulemaking. (1) The department may adopt and enforce rules that are necessary to implement the provisions of this part over which the department has primary jurisdiction and to coordinate regulation of game farms with the department of livestock.

(2) The department of livestock may adopt rules addressing the transportation and importation of game farm animals, restrictions on importation, identification, sale of game farm animal parts, quarantine, hold orders, interior facilities, health regulations, and the care and maintenance of game farm animals.

(3) Rules promulgated pursuant to this part must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

History: En. Sec. 17, Ch. 570, L. 1983; amd. Sec. 11, Ch. 315, L. 1993; amd. Sec. 10, Ch. 503, L. 1995.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Importation permits and health certificates, Title 81, ch. 2, part 7.

87-4-423. Revocation of license — procedure — disposition of animals. (1) Proceedings for the revocation of a license or the discipline of a licensee must be based on a determination by the department, after an investigation, that there is good cause and a sufficient factual basis to believe that the licensee or the principal manager is responsible for one or more of the acts or omissions set out in 87-4-427(1).

(2) The department may initiate revocation or disciplinary proceedings against a licensee by specifying the grounds in writing to the licensee and providing an opportunity for a hearing as provided in 87-4-428.

(3) Upon discovery of a violation of recordkeeping or reporting requirements that is not a material violation or an attempt to deceive, the department shall give notice of the violation to the licensee, with a statement that the violation must be corrected within 30 days of the notice, unless a longer period is approved by the department. Upon failure of the licensee to correct the violation, the department may institute revocation proceedings.

(4) (a) A licensee whose license is revoked shall lawfully dispose of any game farm animal held pursuant to the license. Lawfully acquired and held game farm animals may be disposed of by the licensee within 180 days of the license revocation or within a longer period if specified by the department in the revocation order. After the expiration of this period, the department shall seize and dispose of any game farm animals that have not been lawfully disposed of by the licensee. Any proceeds that remain after deducting the department's expenses revert to the licensee. Any unrecovered costs may be charged to the licensee.

(b) The department, when it is determined to be necessary by the state veterinarian appointed pursuant to 81-1-301, may require that diseased or potentially diseased game farm animals be quarantined or destroyed.

History: En. Sec. 18, Ch. 570, L. 1983; amd. Sec. 5, Ch. 531, L. 1991; amd. Sec. 13, Ch. 315, L. 1993.

87-4-424. Classification — restrictions on importation of certain species. (1) In order to properly regulate importation:

(a) the department shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution or habitat degradation or competition caused by feral populations of escaped game farm animals and shall notify the department of livestock of any changes in classification as they occur; and

(b) the department of livestock shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through parasites or disease.

(2) The department of livestock shall restrict from importation for purposes of game farming any species or subspecies and their hybrids with native species that have been classified in accordance with subsection (1) as posing a threat to native wildlife or livestock. Importation permitted by the department of livestock must comply with the requirements of Title 81, chapter

2, part 7. Copies of import permits issued by the department of livestock must be shared with the department within 10 calendar days. Other pertinent documentation relating to importation must be shared as it becomes available.

History: En. Sec. 7, Ch. 531, L. 1991; amd. Sec. 14, Ch. 315, L. 1993; amd. Sec. 11, Ch. 503, L. 1995.

87-4-425 reserved.

87-4-426. Criteria for issuance of license — fencing and enclosure requirements — rules. (1) A game farm license may be issued by the department only to an applicant:

(a) who owns or leases the premises on which the operations are to be conducted;

(b) who has not been or whose principal manager has not been convicted of or who has not forfeited bond of $100 or more for more than one violation of the fish and game laws or applicable regulations of any state or the United States within a 5-year period prior to application;

(c) who has not or whose principal manager has not at any time pleaded guilty to or been convicted of a felony, unless civil rights have been restored pursuant to law. A person may not apply for licensure during any time in which a deferred or suspended felony sentence is in effect.

(d) who is or whose principal manager is at least 18 years of age.

(2) A game farm license must be issued by the department if:

(a) the applicant has properly fenced the perimeter of the land upon which the game farm is to be located with fencing designed and constructed to prevent the escape of the species of game farm animal kept on the game farm and to prevent the entry of the same species of game animal or other native game animal species capable of interbreeding with or contracting diseases or parasites from game farm animals;

(b) the application is for a single location;

(c) it is demonstrated that the applicant or the applicant's principal manager has the necessary skills to properly care for game farm animals or intends to employ a person who has those necessary skills; and

(d) the application has not been denied under this section or issued with stipulations under subsection (3).

(3) An application for a game farm license may be denied in its entirety or issued with stipulations if necessary to prevent public safety hazards or significant negative impacts to Montana's wildlife resources. Denial of an application or stipulations attached to a game farm license must be based on one or more of the following potential impacts ascribed to the physical location of the proposed game farm:

(a) substantial loss or destruction of critical seasonal game animal habitat or habitat of federally designated threatened or endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., including but not limited to critical breeding, birthing, rearing, and wintering areas;

(b) blockage or disruption of major traditional seasonal migration corridors or major travel routes;

(c) unacceptable threat of introduction or transmission of serious diseases or parasites to native wildlife populations, as determined by the state veterinarian appointed pursuant to 81-1-301;

(d) unacceptable threat of escape of captive game farm animals and establishment of feral populations that would result in habitat damage or competition with or genetic pollution of native wildlife populations;

(e) the creation of a significant threat to the safety of the general public and surrounding landowners by the shooting of game farm animals.

(4) If the department determines that it will propose, within the time allowed under 87-4-409(3), to deny a game farm license or issue a license with stipulations, the applicant must be given an opportunity to make changes to the application within 30 days of receipt of the department's written determination in order to mitigate or correct any problems or deficiencies. The department shall reconsider the application with the proposed changes within 30 days of receipt of changes to the application before granting, proposing to deny, or proposing to issue the license with stipulations.

(5) An applicant may request that the commission review a department proposal to deny a game farm license or to issue a license with stipulations by petitioning the commission for review within 10 days of the department's proposed decision. The commission shall decide whether to grant the license, propose to deny the license, or issue the license with stipulations. The commission's decision then becomes the department's proposed decision, subject to an opportunity for hearing under 87-4-428.

(6) The department shall by rule establish:

(a) criteria for the classification of amendments to an existing license as major or minor; and

(b) an expeditious amendment process for minor amendments.

History: En. Sec. 4, Ch. 315, L. 1993; amd. Sec. 12, Ch. 503, L. 1995.

87-4-427. Revocation of license — criteria — penalties. (1) The department may revoke any game farm license or impose any of the penalties or conditions specified in subsection (3) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate a game farm according to the provisions of this part, rules adopted under this part, or stipulations of the game farm license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of $100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) negligent or willful misconduct of the game farm operation, including but not limited to the unauthorized egress and ingress of game animal species or game farm animals that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the game farm animals of others;

(f) a material and willful falsification of any required game farm records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of a game farm;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other game farm animals and operators or to native wildlife or habitat.

(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

(3) If the department finds, after opportunity for a hearing required under 87-4-428, that a game farm licensee or the principal manager is responsible for any act or omission set out in subsection (1), the department may in its discretion impose any one or more of the following penalties upon the licensee:

(a) revocation of the game farm license for up to 5 years;

(b) imposition of a civil penalty not to exceed $5,000, restoration of any damage to native wildlife, or both;

(c) deferral of the revocation of a license subject to the completion of or adherence to specified conditions; or

(d) reprimand of a licensee.

(4) In addition to the revocation of a license or other penalties allowed by this section, a person who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to criminal prosecution and a fine of not more than $1,000, imprisonment in the county jail for not more than 1 year, or both. Any violation of 87-3-118 is subject to prosecution and penalties under that section.

History: En. Sec. 12, Ch. 315, L. 1993.

87-4-428. Right to administrative hearing. (1) An applicant must be given notice and an opportunity for a hearing on a proposed denial or issuance with stipulations of a game farm license pursuant to 87-4-426 before the department may deny a license or grant a license with stipulations.

(2) A licensee must be given notice and an opportunity for a hearing before the department may refuse to renew a license, withhold consent to the transfer of a license, revoke a license, or discipline a licensee.

(3) The notice and an opportunity for a hearing and any judicial appeal must be conducted as provided in Title 2, chapter 4, parts 6 and 7.

History: En. Sec. 15, Ch. 315, L. 1993.

87-4-429 through 87-4-431 reserved.

87-4-432. Game farm advisory council — appointment of members — duties. (1) There is a game farm advisory council to advise the department and the department of livestock on the administration of game farms in this state.

(2) The game farm advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish, wildlife, and parks commission or the department;

(c) one member who is a representative of the game farm industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the game farm advisory council shall serve 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The game farm advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions.

(5) Council members are not entitled to compensation or travel expenses as provided in 2-15-122.

History: En. Sec. 13, Ch. 503, L. 1995.

Cross-References

Disease control, Title 81, ch. 2.

Part 5

Shooting Preserves

87-4-501. Authorization for licenses, permits, rules, and regulations. The department is hereby authorized and empowered to issue operating licenses or permits for shooting preserves, which may be privately owned and operated, and to make such rules and regulations as may be necessary and proper in carrying out the purposes of this part.

History: En. Sec. 1, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1601.

87-4-502. Size, location, and posting of preserves. Operating licenses or permits may be issued to any person, partnership, association, or corporation for the operation of shooting preserves that meet the requirements hereinafter prescribed:

(1) Each shooting preserve shall be restricted to not more than 1,280 contiguous acres and shall not be located closer than 10 miles from another preserve and in areas which will not substantially reduce hunting areas available to the public as determined by the department.

(2) The exterior boundaries of each shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of 250 feet or less.

History: En. Sec. 2, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1602.

87-4-503. Fees. Fees for shooting preserve licenses or permits shall be $50 per year for the first 160 acres of shooting preserve area, plus $20 per year for each additional 160 acres or parts thereof.

History: En. Sec. 4, Ch. 265, L. 1965; R.C.M. 1947, 26-1604.

87-4-504. Bird license or stamp required. All persons hunting on shooting preserves must have a valid resident or nonresident upland game bird license or a 3-day nonresident shooting preserve bird hunting stamp issued under 87-2-404.

History: En. Sec. 11, Ch. 265, L. 1965; R.C.M. 1947, 26-1611; amd. Sec. 3, Ch. 105, L. 1987; amd. Sec. 1, Ch. 371, L. 1991.

87-4-505. Commercial and membership licenses and permits. Each shooting preserve license or permit issued by the department shall designate whether or not the preserve is open to the public on a commercial basis or is restricted to a membership or other limited group. In the latter case, the license or permit shall specify that the area is a restricted shooting preserve. The department shall maintain accurate listings of the names, addresses, and the location of the property of all persons to whom shooting preserve licenses or permits are issued. Said lists shall be made available in their entirety to anyone requesting same and shall specify whether the preserves are public or private.

History: En. Sec. 12, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1612.

87-4-506. Revocation of license or permit and reissuance. The department may revoke any shooting preserve license or permit issued under the authority of this part when the licensee has violated any of the provisions of this part or any rule or regulation of the department. After such revocation, a new license or permit may be issued if in the discretion of the department the circumstances so warrant.

History: En. Sec. 13, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1613.

87-4-507 through 87-4-520 reserved.

87-4-521. Duration of season. The season established for shooting preserves is the 7-month period beginning September 1 and ending March 31.

History: En. Sec. 7, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1607; amd. Sec. 2, Ch. 371, L. 1991.

87-4-522. Game hunted in preserve. (1) Game which may be hunted under this part shall be confined to artificially propagated pheasants, quail, chukar partridges, turkeys, and such other species as the department may add from time to time.

(2) A minimum number of stock of each species to be hunted on a shooting preserve shall be released on the licensed area during the shooting preserve season. The minimum number of stock of each species to be released shall be determined by the department before the commencement of the season.

History: En. Sec. 3, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1603.

87-4-523. Amount of game recoverable. The operating licenses or permits issued by the department shall entitle holders thereof and their members, guests, or patrons to recover not more than 80% of the total number of each species of game released on the premises each year.

History: En. Sec. 5, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1605.

87-4-524. Preserve operators to establish shooting restrictions. Except for required compliance with the game recovery restriction provided in 87-4-523, shooting preserve operators may establish their own shooting limitations and restrictions on the age, sex, and number of each species that may be taken by each person.

History: En. Sec. 6, Ch. 265, L. 1965; R.C.M. 1947, 26-1606.

87-4-525. Tagging of game. All harvested game shall be tagged with a self-sealing tag prior to being either consumed on the premises or removed therefrom, such tags to remain affixed until the game actually is prepared for consumption. The department shall furnish tags at nominal cost to shooting preserve operators, the tags to be numbered consecutively and dated by year of issuance.

History: En. Sec. 8, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1608.

87-4-526. Registration of shooters. Each shooting preserve operator shall maintain a registration book listing the names, addresses, and hunting license numbers of all shooters; the date on which they hunted; the amount of game and the species taken; and the tag numbers affixed to each carcass. An accurate record likewise must be maintained of the total number, by species, of game raised and/or purchased and the date and number of all species released. These records shall be open to inspection by a delegated representative of the department at any reasonable time and shall be the basis upon which the game-recovery limits in 87-4-523 shall be determined.

History: En. Sec. 9, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1609.

87-4-527. Wild game on preserve. Any wild game found on shooting preserves may be harvested in accordance with applicable license, game, and hunting laws pertaining to open seasons, bag and possession limits, and rules, as are established regularly by the department and the U.S. fish and wildlife service.

History: En. Sec. 10, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1610; amd. Sec. 3, Ch. 371, L. 1991.

87-4-528. Unscheduled inspections by department. The department shall conduct unscheduled inspections of all shooting preserves licensed under this part to ensure that pertinent statutes as well as the rules and regulations of the department are being followed and obeyed.

History: En. Sec. 14, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1614.

Cross-References

Entry on private land — policy, 87-1-229.

Part 6

Fish Ponds, Seining, and Commercial Taking of Aquatic Fish Food Organisms

Part Cross-References

Fisheries funding under Montana Capital Company Act, Title 90, ch. 8, part 1; 90-8-104.

87-4-601. *(Temporary)* **Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners of private ponds;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for propagation purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish, wildlife, and parks commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the confluence of Cottonwood Creek and the Yellowstone River during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) Forty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) Sixty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area sportsmen. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants. *(Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)*

87-4-601. *(Effective July 1, 2003)* **Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners thereof;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish, wildlife, and parks commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

History: En. Sec. 21, Ch. 173, L. 1917; re-en. Sec. 3713, R.C.M. 1921; re-en. Sec. 3713, R.C.M. 1935; amd. Sec. 11, Ch. 224, L. 1947; amd. Sec. 35, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-331; amd. Sec. 1, Ch. 52, L. 1979; amd. Sec. 2, Ch. 267, L. 1983; amd. Sec. 1, Ch. 152, L. 1987; amd. Sec. 1, Ch. 409, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 1, Ch. 68, L. 1991; amd. Sec. 1, Ch. 196, L. 1993.

Cross-References

Sale of seafood, 30-12-401.

License required to take game fish, 87-2-103.

Lawful means of angling or fishing, 87-2-120.

Navigable waters subject to fishing rights, 87-2-305.

Paddlefish tags, 87-2-306.

Unlawful to purchase, sell, possess, or transport fish — exceptions, 87-3-111.

Authority to net or trap whitefish in Kootenai River, 87-3-204.

Unlawful to use explosives or poisons in taking fish, 87-3-206.

87-4-602. Seining licenses. The director shall keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game moneys in the state special revenue fund. A license may not be issued to a person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R.C.M. 1921; re-en. Sec. 3715, R.C.M. 1935; amd. Sec. 30, Ch. 511, L. 1973; R.C.M. 1947, 26-333; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Use of fish and game money, 87-1-601, 87-1-701.

Unlawful to possess net or seine — exceptions, 87-3-205.

87-4-603. Fish pond license for artificial lake or pond — records. (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, the license holder shall furnish a corporate surety bond to the state for $500, conditioned to the effect that the license holder will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license and also conditioned to the effect that the license holder will submit an annual report on transactions to the director.

(2) "Artificial lake or pond", as used in this section, does not include a natural pond or body of water, including streams and rivers, created by natural means or any portion of the streambed or lakebed of a natural pond or body of water. It includes only bodies of water created by artificial means or diversion of water that do not exceed 500 acres of surface area.

(3) The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.

(4) (a) A licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers; and

(iv) locations to or from which fish or eggs are transferred.

(b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (4)(a).

(5) A person who owns or controls an artificial lake or pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(6) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proven otherwise.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R.C.M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; re-en. Sec. 3695, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973; amd. Sec. 32, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-306; amd. Sec. 9, Ch. 376, L. 1989; amd. Sec. 1, Ch. 425, L. 1995.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Entry on private land — policy, 87-1-229.

87-4-604. Repealed. Sec. 4, Ch. 246, L. 1989.

History: En. Sec. 1, Ch. 13, L. 1965; amd. Sec. 45, Ch. 9, L. 1977; R.C.M. 1947, 26-708.

87-4-605. Records and report of whitefish sales by fishing license holders. A holder of a fishing license who catches whitefish for speculative purposes, for market, or for sale shall keep a record and make an annual report to the department of the number of whitefish sold and the date of each sale. The annual report shall be submitted to the appropriate department regional office within 15 days of the end of the license year.

History: En. Sec. 2, Ch. 52, L. 1979.

87-4-606. Term of license — license not transferable. (1) A licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on January 31 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted.

(2) A licensee who does not sell fish or eggs is not required to renew his license. However, a new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.

(3) A fish pond license granted under 87-4-603 is not transferable.

History: En. Sec. 10, Ch. 376, L. 1989.

87-4-607. Revocation of fish pond license. (1) A fish pond license may be revoked for failure to operate or use the pond according to the terms or conditions of the license or state statutes, rules, or orders covering importation, transportation, or introduction of fish or eggs.

(2) If the department discovers a violation under this section, it may institute revocation proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of the violation, the department may revoke the fish pond license.

History: En. Sec. 11, Ch. 376, L. 1989.

87-4-608. Unlawful taking of crayfish — penalty. (1) It is unlawful for a person to take crayfish from the waters of the state, except from private fish ponds regulated under 87-4-603 or as provided in subsection (2), for sale or commercial distribution.

(2) A person may take crayfish from the waters of the state for sale or commercial distribution as fishing bait under rules adopted by the department under 87-4-609.

(3) A person who violates this section is guilty of a misdemeanor and, if convicted, may be fined not less than $50 or more than $500 or may be imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 1, Ch. 456, L. 1993.

87-4-609. Regulation of commercial taking of aquatic fish food organisms — permit — rulemaking authority. (1) The department shall regulate the taking, for sale or commercial distribution, of crayfish for fishing bait, crayfish from private fish ponds regulated under 87-4-603, mysis shrimp, and other aquatic organisms that provide a food source for fish.

(2) It is unlawful for a person to take aquatic fish food organisms for commercial purposes without obtaining a permit from the department. A permit applicant shall provide the department with sufficient details of the proposed operation to take any aquatic fish food organism for sale or commercial distribution to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest, to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of aquatic fish food organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements for a particular aquatic fish food organism, in order to prevent overharvest or conflict with fishing and recreational uses of the waters.

History: En. Sec. 1, Ch. 246, L. 1989; amd. Sec. 2, Ch. 456, L. 1993.

87-4-610. Fees for commercial taking of aquatic fish food organisms — use of fees. (1) To finance the administration and enforcement of the provisions of 87-4-609, the department may by rule set reasonable fees for:

(a) issuance of the permit required in 87-4-609; and

(b) use of traps, nets, or seines in Montana waters for the taking of aquatic fish food organisms.

(2) The department shall deposit any fees collected under the provisions of subsection (1) in the state special revenue fund for use by the department.

History: En. Sec. 2, Ch. 246, L. 1989.

Part 7
Sale of Game in Commercial Trade

87-4-701. Definitions. (1) The words "game" and "game birds" or "parts of the same" mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana.

(2) The words "merchant", "hotelkeeper", or "restaurant keeper" mean each manager, servant, agent, or employer of such person.

(3) The word "sale", as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

(a) a contract by which, for a pecuniary consideration called a price, one transfers an interest in either game or fish;

(b) a contract by which, for an article or thing of value, one transfers, barters, or exchanges an interest either in game or fish.

History: (1), (2)En. Sec. 62, Ch. 173, L. 1917; re-en. Sec. 3741, R.C.M. 1921; amd. Sec. 30, Ch. 192, L. 1925; re-en. Sec. 3741, R.C.M. 1935; amd. Sec. 15, Ch. 9, L. 1977; Sec. 26-805, R.C.M. 1947; (3)En. Sec. 64, Ch. 173, L. 1917; re-en. Sec. 3743, R.C.M. 1921; re-en. Sec. 3743, R.C.M. 1935; Sec. 26-808, R.C.M. 1947; R.C.M. 1947, 26-805, 26-808.

87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. (1) Except as provided in subsection (2), it is lawful for any merchant, hotelkeeper, or restaurant keeper to have in his possession, offer for sale, or sell game birds and game, provided the game or game birds are not killed in Montana.

(2) No merchant, hotelkeeper, or restaurant keeper may offer for sale or sell any grizzly bear or any head, hide, teeth, claws, or other part of a grizzly bear.

History: En. Sec. 58, Ch. 173, L. 1917; re-en. Sec. 3737, R.C.M. 1921; re-en. Sec. 3737, R.C.M. 1935; amd. Sec. 13, Ch. 9, L. 1977; R.C.M. 1947, 26-801; amd. Sec. 4, Ch. 540, L. 1985.

Cross-References

Disposition of seized grizzly bears, 87-1-511.

Waste of fish or game, 87-3-102.

Registration for sale of certain grizzly bears, 87-3-110.

87-4-703. Evidence of lawful possession of game. Each merchant, hotelkeeper, or restaurant keeper, having in his possession and offering for sale any game or game birds, shall produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required in 87-4-704 to be kept by him. A failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game birds, is prima facie evidence of the violation of this part.

History: En. Sec. 59, Ch. 173, L. 1917; re-en. Sec. 3738, R.C.M. 1921; re-en. Sec. 3738, R.C.M. 1935; amd. Sec. 14, Ch. 9, L. 1977; R.C.M. 1947, 26-802.

87-4-704. Record to be kept. It shall be the duty of every person having in his possession and offering for sale any game or game birds to keep a record showing the amount and kind of game and game birds received by him, together with shipping and transportation receipts showing the true time and place of shipment of said game and game birds and the name of the person shipping same; provided, however, that any merchant in Montana selling game or game birds to any hotel or restaurant keeper or other person shall, in addition to the record and receipts heretofore required to be kept by him, keep a record of the date of sale, kind and amount of game or game birds and the name of the purchaser and provided, further, that in the case of hotel and restaurant keepers or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the said merchant showing the date, amount and kind of game or game birds purchased shall be sufficient evidence of compliance with the provisions of this part by such hotel or restaurant keeper or other person.

History: En. Sec. 60, Ch. 173, L. 1917; re-en. Sec. 3739, R.C.M. 1921; re-en. Sec. 3739, R.C.M. 1935; R.C.M. 1947, 26-803.

87-4-705. Noncompliance with law. It is unlawful for any person to have in his possession and offer for sale or sell any game or game birds without having complied with the provisions of 87-4-704 relating to the keeping of a record and shipping and transportation receipts.

History: En. Sec. 61, Ch. 173, L. 1917; re-en. Sec. 3740, R.C.M. 1921; re-en. Sec. 3740, R.C.M. 1935; amd. Sec. 23, Ch. 224, L. 1947; amd. Sec. 46, Ch. 9, L. 1977; R.C.M. 1947, 26-804.

Cross-References

Registration for sale of certain grizzly bears, 87-3-110.

Restrictions on sale of fish or game, 87-3-111.

Unlawful sale of fish or spawn, 87-4-601.

Unlawful sale of wild birds, 87-5-201.

Part 8
Menageries and Zoos

87-4-801. Definitions. As used in this part unless the context requires otherwise, the following definitions apply:

(1) "Roadside menagerie or zoo" means any place where one or more wild animals, including birds, reptiles, and the like, are kept in captivity for the evident purpose of exhibition or attracting trade. It does not include the exhibition of any animal by an educational institution or in a zoological garden chartered as a nonprofit corporation by the state and does not include animals exhibited by any traveling theatrical exhibition or circus.

(2) "Wild animal" means an animal wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

History: En. Sec. 1, Ch. 130, L. 1969; amd. Sec. 45, Ch. 511, L. 1973; R.C.M. 1947, 26-1205.

Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

87-4-802. Department regulations. The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding, and sanitation of animals kept in roadside menageries and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1206(2).

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-4-803. Permits. (1) The department shall grant permits for roadside menageries or zoos. It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five or less animals shall be $10. The annual permit fee for more than five animals shall be $25. Permits shall expire on December 31 but may be renewed upon payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the department until it has satisfactorily verified that the provisions for housing and caring for such animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Secs. 2, 3, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1206(1), 26-1207.

87-4-804. Permit to obtain wild animals. (1) It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds:

(a) that all provisions of this part and of the department regulations are complied with by the applicant; and

(b) that the number and species of wildlife desired is not excessive under the circumstances.

(2) If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold, or transferred under such regulations as the department may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1208.

87-4-805. Restrictions on menagerie permits — offspring state property. A menagerie permit cannot be construed as a commercial game propagating permit, and the holder of such permit must not under any circumstances sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds, or fur-bearing animals are the property of the state wherein the menagerie is located and must be disposed of by the state.

History: En. Sec. 5, Ch. 130, L. 1969; R.C.M. 1947, 26-1209.

87-4-806. Inspection, permit revocation, and redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this part or with the department regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1210.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-807. Enforcement and penalty. (1) The provisions of this part shall be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this part shall upon conviction be punished as provided in 87-1-102, and at the discretion of the court, the permit and all rights and privileges inherent therein may be forfeited.

(2) Any animals being kept in violation of any section of this part may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate, and the commission shall hold a hearing on such an appeal, and the decision of the commission shall be final.

History: En. Sec. 7, Ch. 130, L. 1969; amd. Sec. 5, Ch. 465, L. 1977; R.C.M. 1947, 26-1211.

Cross-References

Contested case procedure and judicial review of contested cases, Title 2, ch. 4, parts 6 and 7.

Fish, Wildlife, and Parks Commission as quasi-judicial board, 2-15-3402.

87-4-808. Fines, bonds, penalties, and fees. Fines, bonds, or penalties, except those obtained by a justice's court, shall be administered and disposed of in accordance with the provisions of 87-1-601. Fees obtained under this part shall be deposited with the state treasurer and credited to the state special revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969; amd. Sec. 46, Ch. 511, L. 1973; R.C.M. 1947, 26-1212; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 63, Ch. 557, L. 1987.

Cross-References

State contribution paid into game wardens' and peace officers' retirement account, 19-8-504.

Department to control money received from fines, 87-1-201.

Part 9

Game Bird Farms

Part Cross-References

Minimum wage for employees, 39-3-402, 39-3-404, 39-3-406.

Unemployment insurance coverage — agricultural labor, 39-51-205.

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

Fee limitation for multiple licenses, 87-1-606.

87-4-901. Definitions. For purposes of this part, the following definitions apply:

(1) "Game bird farm" means an enclosed area upon which game birds may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game birds or parts of game birds as authorized under this part.

(2) "Game birds" means all birds defined as game birds in 87-2-101, except that the only pheasants included are ring-necked pheasants, and quail are not included.

History: En. Sec. 20, Ch. 570, L. 1983.

87-4-902. Exemption. This part does not apply to:

(1) a person who owns, controls, or propagates game birds for purposes other than sale or conveyance of game birds or parts thereof and who notifies the department and receives its written authorization and exemption; or

(2) the holder of a migratory game bird avicultural permit under 87-2-807.

History: En. Sec. 21, Ch. 570, L. 1983; amd. Sec. 2, Ch. 262, L. 1985.

87-4-903. Game bird farm license required. Except as provided in 87-4-902, no person may own, control, or propagate game birds unless he holds a current game bird farm license from the department.

History: En. Sec. 22, Ch. 570, L. 1983.

87-4-904. Application for game bird farm license — limitation on issuance. (1) A person desiring to obtain a game bird farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;
(b) his address;
(c) the species of game bird and any plans to propagate them;
(d) the legal description of the lands to be included;
(e) the type of fence or enclosure that the applicant contemplates erecting;
(f) the source of game birds; and
(g) for a nonresident owner, the name and address of a local resident agent.

(2) (a) A game bird farm license shall be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced or otherwise enclosed the place where such game bird farm is to be located.

(b) Any game bird farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If the required fencing or enclosure has not been completed, the department shall approve the application subject to the fencing or enclosure being completed. If the application is denied, the department shall specify the reasons for denial.

History: En. Sec. 23, Ch. 570, L. 1983.

87-4-905. License and renewal fee — deposit of fees. (1) Game bird farm license and annual renewal fees must be set by department rule.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

History: En. Sec. 24, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References
Fee limitation for multiple licenses, 87-1-606.

87-4-906. Term of license — conditions — changes in operation. (1) A game bird farm license is valid only for the license year for which it is issued. The licensee shall apply for renewal annually, and the department shall renew the license if the licensee has not violated any provision under which the license was granted.

(2) The licensee shall notify the department of any proposed changes in the species managed or in the size or location of the enclosure prior to the institution of such change.

History: En. Sec. 25, Ch. 570, L. 1983.

87-4-907. License nontransferable. A game bird farm license is nontransferable.

History: En. Sec. 26, Ch. 570, L. 1983.

87-4-908. Inspection. Upon receipt of an application, the department shall inspect the game bird farm facilities and shall thereafter inspect the facilities and the records required to be kept by such farm on a scheduled basis or on such other reasonable basis as may be determined necessary.

History: En. Sec. 27, Ch. 570, L. 1983.

Cross-References
Entry on private land — policy, 87-1-229.

87-4-909. Game farm birds as private property. All birds lawfully raised in a licensed game bird farm are the private property of the licensee, and the licensee may sell or transfer such birds as private property.

History: En. Sec. 28, Ch. 570, L. 1983.

87-4-910. Transportation of birds. Any birds purchased for use on a game bird farm or any birds raised on a game bird farm may be transported only in compliance with Title 81, chapter 2, part 7, and applicable administrative rules.

History: En. Sec. 29, Ch. 570, L. 1983.

87-4-911. Sale of meat. A licensee may sell game farm birds or parts thereof only in compliance with all health laws applicable to the sale of game meat.

History: En. Sec. 30, Ch. 570, L. 1983.

87-4-912. Records and reporting. (1) Each licensee shall keep accurate records of the number and species of birds purchased, transferred, or sold and the name of each person to whom or from whom such birds were purchased, transferred, or sold.

(2) On or before January 31 of each year, each licensee shall file a report with the director, showing the number and species of birds on hand on January 1 and the number and kinds of birds purchased, transferred, or sold during the past year. All records described in this section must be kept for not less than 3 years.

History: En. Sec. 31, Ch. 570, L. 1983.

87-4-913. Rulemaking. The department may adopt and enforce only such rules as are necessary to implement the provisions of this part. The rules may address but are not limited to fencing requirements, reporting requirements, the care and maintenance of birds held by game bird farm operators, and licensing requirements for applicants.

History: En. Sec. 32, Ch. 570, L. 1983.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-4-914. Release of birds. Game bird farm licensees may release birds into the wild only with the prior approval of the director.

History: En. Sec. 33, Ch. 570, L. 1983.

87-4-915. Field trials — permits. (1) As used in this section, "field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(2) No person may conduct a field trial unless he has received a permit under this section. Applicants for a permit to conduct a field trial must make application to the director upon a form furnished by the department for that purpose. The application must be signed and sworn to by the applicant, stating the applicant's name and address, the name and address of any national affiliate, the place for the field trial clearly defined, the date or dates of the proposed field trial, whether live birds are to be used, and any other information required by the director to determine the advisability of granting permission for the proposed field trial. The application must state that if a permit is granted, the applicant will carefully flush all wild game birds from fields used for the field trial each day before the field trial begins and will not permit dogs to run free in fields that have not been carefully flushed. The application must be presented to the director not less than 20 days prior to the date proposed for the field trial.

(3) The director may refuse any application that he determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds in this state. Any denial by the director of such application must state the reasons therefor and must be mailed to the applicant within 10 days of receipt of the application.

(4) No applicant receiving a permit to conduct a field trial may violate or authorize violation of any of the terms of the permit.

(5) All live game birds used in a field trial must be tagged before being planted or released and may be planted or released only in the presence of a representative of the department. If an untagged bird is shot during any field trial, the person to whom the permit was issued must immediately replace it with a live bird.

(6) (a) Dogs may be trained in open fields at any time without permission of the director only if:

(i) no live game birds are killed or captured during training; and

(ii) the training is more than 1 mile from any bird nesting or management area or game preserve.

(b) A person may train dogs with a method that will kill birds acquired from a game bird farm only after receiving a written permit from the department and only in compliance with the terms of the permit.

History: En. Sec. 34, Ch. 570, L. 1983.

87-4-916. Revocation of license. (1) A game bird farm license may be revoked for failure to operate the game bird farm according to provisions of this part or rules adopted under this part.

(2) Upon discovery of a violation, the department shall give notice of such violation to the licensee, with a statement of a specific time by which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing, upon proof of violation, the department may revoke the game bird farm license.

History: En. Sec. 35, Ch. 570, L. 1983.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 10
Fur Farms

Part Cross-References

Minimum wages for fur farm employees, 39-3-402, 39-3-404, 39-3-406.

Unemployment insurance coverage — agricultural labor, 39-51-205.

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

Fee limitation for multiple licenses, 87-1-606.

Fur dealers, Title 87, ch. 4, part 3.

87-4-1001. Definitions. For purposes of this part, the following definitions apply:

(1) "Fur farm" means the enclosed land area upon which furbearers may be kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers as authorized under this part.

(2) "Furbearer" means a marten or sable, otter, muskrat, fisher, bobcat, lynx, wolverine, or beaver. The term does not include fox or mink.

History: En. Sec. 36, Ch. 570, L. 1983.

87-4-1002. Fur farm license required — applicability. (1) Except as provided in subsection (2), no person may own, control, or propagate furbearers unless he holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts thereof.

History: En. Sec. 37, Ch. 570, L. 1983.

87-4-1003. Application for license. (1) Any person desiring to obtain a fur farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;
(b) his address;
(c) species of furbearers and any plan to propagate them;
(d) the legal description of the lands to be included;
(e) the type of fence that the applicant contemplates erecting;
(f) the source of furbearers.

(2) (a) A fur farm license shall be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the place where such fur farm is to be located.

(b) Any fur farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the fur farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If required fencing has not been completed, the department shall approve the application subject to the fencing being completed. If the application is denied, the department shall specify the reasons for denial.

History: En. Sec. 38, Ch. 570, L. 1983.

87-4-1004. License and renewal fee — deposit. (1) Fur farm license and annual renewal fees must be set by department rule.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

History: En. Sec. 39, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Fee limitation for multiple licenses, 87-1-606.

87-4-1005. Term of license — conditions — changes in operation. (1) A fur farm license is valid only for the license year in which it is issued. The licensee shall apply for renewal annually, and the department shall renew the license if the licensee has not violated any provision under which it was granted.

(2) The licensee shall notify the department of any proposed changes in the species managed or in the size or location of the enclosure prior to the institution of such change.

History: En. Sec. 40, Ch. 570, L. 1983.

87-4-1006. License nontransferable. A fur farm license is nontransferable.

History: En. Sec. 41, Ch. 570, L. 1983.

87-4-1007. Inspection. Upon receipt of an application for a license, the department shall inspect each fur farm and thereafter shall inspect each fur farm and the records required to be kept by such fur farm on a scheduled basis or on such other reasonable basis as may be determined necessary.

History: En. Sec. 42, Ch. 570, L. 1983.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-1008. Furbearers as private property. All furbearers lawfully raised on a licensed fur farm are the private property of the licensee, and the licensee may sell or transfer such furbearers as private property.

History: En. Sec. 43, Ch. 570, L. 1983.

Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

Prohibition of possession of certain wild animals, 50-23-102.

Property rights in wild animals, 70-2-111.

87-4-1009. Transportation of furbearers. Any furbearers purchased for use on a fur farm or any furbearers raised on a fur farm may be transported only in compliance with Title 81, chapter 2, part 7, and applicable administrative rules.

History: **En. Sec. 44, Ch. 570, L. 1983.**

87-4-1010. Sale of furs. A fur farm owner who desires to sell furs shall comply with all the requirements of part 3 of this chapter.

History: **En. Sec. 45, Ch. 570, L. 1983.**

87-4-1011. Records and reporting. (1) Each licensee shall keep accurate records of the number and species of furbearers purchased, transferred, or sold and the name of each person to whom or from whom such furbearers were purchased, transferred, or sold.

(2) On or before January 31 of each year, each licensee shall file a report with the director, showing the number and species of furbearers on hand on January 1 and the number and species of furbearers purchased, transferred, or sold during the past year. All records described in this section must be kept for not less than 3 years.

History: **En. Sec. 46, Ch. 570, L. 1983.**

87-4-1012. Rulemaking. The department may adopt and enforce only such rules as are necessary to implement this part. The rules may address but are not limited to fencing requirements, reporting requirements, the care and maintenance of the furbearers held by fur farm operators, and licensing requirements for applicants.

History: **En. Sec. 47, Ch. 570, L. 1983.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-4-1013. Revocation of license. (1) A fur farm license may be revoked for failure to operate the fur farm according to the provisions of this part or rules adopted under this part.

(2) Upon discovery of a violation, the department shall give notice of such violation to the licensee, with a statement of a specific time by which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing, upon proof of violation, the department may revoke the fur farm license.

History: **En. Sec. 48, Ch. 570, L. 1983.**

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

87-4-1014. Unlawful capture. No person may capture, take, or otherwise acquire a furbearer from the wild for use on a fur farm.

History: **En. Sec. 1, Ch. 355, L. 1987.**

CHAPTER 5

WILDLIFE PROTECTION

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Chapter Cross-References

Authority of cities and towns to accept gifts or devises for fish or game reserve, 7-8-103, 7-8-104.

Management of county lands — fish and wildlife habitat improvement, 7-8-2501, 7-13-2218.

County park boards — rules to protect wildlife, Title 7, ch. 16, part 23.

Municipal park boards, Title 7, ch. 16, part 42.

Voluntary checkoff for nongame wildlife programs, 15-30-150.

Hazardous waste management, Title 75, ch. 10, part 4.

Range for wild game animals reserved in grazing districts, 76-16-107.

Conservancy districts, Title 85, ch. 9.

Penalty provisions, 87-1-102.

Nongame wildlife account, 87-5-121.

Resource development and reclamation, Title 90, ch. 2.

Part 1

Nongame and Endangered Species

87-5-101. Short title. This part shall be known and may be cited as "The Nongame and Endangered Species Conservation Act".

History: En. Sec. 1, Ch. 461, L. 1973; R.C.M. 1947, 26-1801.

87-5-102. Definitions. As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in 87-5-121.

(2) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(3) "Endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(4) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including but not limited to research, census, law enforcement, habitat improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(5) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(6) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(7) "Person" means any individual, firm, corporation, association, or partnership.

(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(9) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts thereof.

History: En. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; R.C.M. 1947, 26-1802(3), (part (4)), (5) thru (10); amd. Sec. 1, Ch. 627, L. 1983.

87-5-103. Legislative policy. The legislature finds and declares all of the following:

(1) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as members of ecosystems;

(2) that species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers;

(3) that the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless such actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973; R.C.M. 1947, 26-1803.

87-5-104. Investigations by department. The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. The department shall conduct ongoing investigations of nongame wildlife.

History: En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(part).

87-5-105. Regulations to manage nongame wildlife. (1) On the basis of the determinations made pursuant to 87-5-104, the department shall issue management regulations. Such regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to 87-5-104 through 87-5-106, giving their common and scientific names by species and subspecies. The department may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The department shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. The department may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.

History: En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(part).

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-106. Unlawful acts. Except as provided in regulations issued by the department, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale nongame wildlife deemed by the department to be in need of management. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the department to be in need of management.

History: En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(3).

87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations but not later than 1 year after July 1, 1973, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(2) The department shall conduct a review of the state list of endangered species within not more than 2 years from its effective date and every 2 years thereafter. The department may propose specific legislation to amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this part, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(4) Any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) In the event the United States' list of endangered native fish and wildlife is modified subsequent to July 1, 1973, by additions or deletions, such modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts such modification for the state.

History: Ap. p. Sec. 5, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1805, R.C.M. 1947; Ap. p. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; Sec. 26-1802, R.C.M. 1947; R.C.M. 1947, 26-1802(part (4)), 26-1805; amd. Sec. 1, Ch. 240, L. 1987.

Cross-References

Possession, transportation, exportation, processing, sale or offer for sale, or shipment of endangered species generally prohibited, 87-5-112.

87-5-108. Establishment of programs. (1) The director shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The department shall establish such policies as are necessary to carry out the purpose of this section and 87-5-109.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section and 87-5-109 or utilized for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this section and 87-5-109. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section and 87-5-109.

History: En. Sec. 6, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1806(1) thru (3).

Cross-References

Cooperative agreements for research, training, and other projects, 87-1-210.

87-5-109. Taking of species for educational, scientific, or other purposes. (1) The director may permit the taking, possession, transportation, exportation, or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(2) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured, or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department. Endangered species may be removed, captured, or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture, or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the department pursuant to 87-5-105.

History: En. Sec. 6, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1806(4), (5); amd. Sec. 153, Ch. 370, L. 1987.

Cross-References

Taking fish or game for scientific purposes, 87-2-806.

Possession, transportation, exportation, processing, sale or offer for sale, or shipment of endangered species generally prohibited, 87-5-112.

Scientific permits on game preserves, 87-5-401.

87-5-110. Department to issue regulations. The department shall issue such regulations as are necessary to carry out the purposes of this part.

History: En. Sec. 7, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1807.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-111. Enforcement and penalty. (1) Any person who violates the provisions of this part or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Upon a first conviction for a violation under this part, the court may fine the defendant not to exceed $250. Upon a second such conviction, the defendant may be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 30 days, or both. Upon subsequent such convictions,

the defendant shall be fined not less than $500 or more than $1,000 and in addition may be imprisoned in the county jail for any term not to exceed 6 months.

(3) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this part.

(4) Wildlife seized under the provisions of this part shall be held by an officer or agent of the department pending disposition of court proceedings and thereafter be forfeited to the state for disposition as the director may deem appropriate. Prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The department is authorized to issue regulations to implement this subsection.

History: En. Sec. 8, Ch. 461, L. 1973; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1808.

87-5-112. Construction. This part may not be construed to apply retroactively or to prohibit importation into the state of wildlife that are lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale, or shipment of any wildlife whose species or subspecies is determined to be threatened with statewide extinction in this state but not in the state where originally taken, if the person engaging therein demonstrates by substantial evidence that the wildlife was lawfully taken or removed from the state. However, this section may not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), except as permitted in the provision by 87-5-107(3) and (4) and 87-5-109(1).

History: En. Sec. 9, Ch. 461, L. 1973; R.C.M. 1947, 26-1809(1); amd. Sec. 307, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 at beginning of second sentence substituted "this section may not be construed" for "this subsection may not be construed"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Importation of game animals, Title 81, ch. 2, part 7.

87-5-113 through 87-5-120 reserved.

87-5-121. Nongame wildlife account. (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-150 and all interest earned by the fund before being expended under this section must be deposited in the account.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that money collected under 15-30-150 may not be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

History: En. Sec. 2, Ch. 627, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 436, L. 1985; amd. Sec. 1, Ch. 589, L. 1987; amd. Sec. 61, Ch. 16, L. 1991.

87-5-122. Duties of commission. (1) The commission shall review and approve annually the nongame wildlife programs projects recommended by the department for funding from the nongame wildlife account. The commission shall provide for public comment during the review and approval process.

(2) The commission may adopt rules governing:

(a) the use of the nongame wildlife account set forth in 87-5-121; and

(b) the review and approval process set forth in subsection (1).

History: En. Sec. 4, Ch. 627, L. 1983.

87-5-123. Repealed. Sec. 56, Ch. 349, L. 1993.

History: En. Sec. 5, Ch. 627, L. 1983; amd. Sec. 2, Ch. 589, L. 1987; amd. Sec. 61, Ch. 112, L. 1991.

Part 2

Wild Birds — Regulation of Raptors

87-5-201. Protection of wild birds and their nests and eggs. (1) It is unlawful for a person to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or to take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director.

(2) This section does not apply to:

(a) the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, magpies, and other birds the department designates or to the taking or destruction of their nests and eggs;

(b) the possession or transportation of parts or plumage of eagles used for religious purposes by a member of an Indian tribe when possessed or transported as permitted by 16 U.S.C. 668a.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; re-en. Sec. 3723, R.C.M. 1935; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973; amd. Sec. 38, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501; amd. Sec. 1, Ch. 301, L. 1983.

Cross-References

License required to hunt or trap game birds, 87-2-103.

Unlawful to buy, sell, possess, or transport game birds, 87-3-111, 87-4-705.

Destruction of eagles or predatory hawks and owls, 87-5-209.

Protection of birds in game preserves and closed areas, Title 87, ch. 5, part 4.

87-5-202. Definition of raptors. "Raptors", when used in this part, means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(1).

87-5-203. Regulation of raptors. A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this part.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(2).

87-5-204. License and rules for falconry and raptors. (1) The commission shall adopt specific rules for the keeping of records and for the trapping, taking, possession by residents and nonresidents, selling or transfer of possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry and set license qualifications and fees. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive. Except as provided in 87-5-210, it is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(2) Licensees must have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds must have in possession a valid resident or nonresident upland game bird license or waterfowl stamp, as appropriate.

(3) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(3), (5), (6), (13), (14); amd. Sec. 1, Ch. 297, L. 1983; amd. Sec. 4, Ch. 105, L. 1987; amd. Sec. 1, Ch. 243, L. 1991.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Discrimination in license issuance prohibited, 49-3-204.

Powers of Fish, Wildlife, and Parks Commission, 87-1-301.

87-5-205. Restrictions on species allowed for falconry. (1) The peregrine falcon (Falco peregrinus), bald eagle (Haliaeetus leucocephalus), and osprey (Pandion haliaeetus) may not be captured in this state for the sport of falconry.

(2) Species of raptors which are native to North America may be brought into Montana for the purpose of falconry unless that action is specifically prohibited by this part, the laws of other states, or the rules of the federal government. Those raptors may be possessed, subject to this part. A person bringing a raptor into this state must be able to show proof of the area of origin.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(4), (7); amd. Sec. 1, Ch. 422, L. 1987.

Cross-References

Importation permits and health certificates, Title 81, ch. 2, part 7.

87-5-206. Repealed. Sec. 4, Ch. 243, L. 1991.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(8), (9), (12), (15); amd. Sec. 2, Ch. 297, L. 1983; amd. Sec. 1, Ch. 532, L. 1987.

87-5-207. Restrictions on use of raptors. (1) Raptors may not be used to intentionally flush or harass big game.

(2) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other rules relating to game birds must be obeyed.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(10), (11).

87-5-208. Nonresidents allowed raptors in state. (1) A nonresident who possesses a valid federal falconry license may practice falconry in the state of Montana with legally acquired and permitted raptors. A nonresident is allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

(2) A nonresident is not allowed to capture raptors from the wild in the state of Montana for falconry or captive breeding purposes.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(16); amd. Sec. 3, Ch. 243, L. 1991.

87-5-209. Destruction of eagles or predatory hawks and owls. Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(17).

87-5-210. Captive breeding of raptors — permit — transfer and revocation — rules. (1) The department may grant permits to a person, whether or not licensed under this part, for the taking and holding of raptors for captive breeding purposes under such conditions, consistent with this part and with rules adopted by the commission, as the department may specify in the permit. The commission may set permit qualifications and fees by rule.

(2) Captive breeding permits are not transferable and may be revoked at any time by the department for violation of any conditions of the permit or regulations of the commission.

(3) The commission shall adopt rules regarding raptors taken and held for captive breeding projects. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive.

History: En. Secs. 3, 4, 5, Ch. 297, L. 1983; amd. Sec. 2, Ch. 532, L. 1987; amd. Sec. 2, Ch. 243, L. 1991.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 3
Grizzly Bear

Part Cross-References

Grizzly as state animal, 1-1-508.

Registration for sale of certain grizzly bears, 87-3-110.

87-5-301. Policy toward grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve, and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969; R.C.M. 1947, 26-307.2.

87-5-302. Commission regulations on grizzly bear. The commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls, and hides; possession limits; and requirements for transportation, exportation, and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969; R.C.M. 1947, 26-307.3.

Cross-References

Importation permits and health certificates, Title 81, ch. 2, part 7.

Department authorized to make rules relative to tagging, possession, or transportation of bear, 87-1-201.

Fixing of seasons and bag and possession limits, 87-1-304.

Tagging of carcasses of game animals, 87-2-509.

Disposition of bear carcass, 87-3-102.

Registration for sale of certain grizzly bears, 87-3-110.

Felony sale or possession of wildlife — penalty, 87-3-118.

87-5-303. Repealed. Sec. 5, Ch. 568, L. 1985.

History: En. Sec. 4, Ch. 167, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-301.1.

Part 4
Game Preserves and Closed Areas

Part Cross-References

Establishment of state scientific and recreational park to protect biological station grounds, Title 23, ch. 1, part 2.

Commission empowered to establish and close fish and game refuges, 87-1-305.

Acquisition of land by United States for migratory bird reservation, 87-1-705.

Regulation of bird reserve in Flathead County, 87-1-706.

Water supply for Benton Lake Wildlife Refuge, 87-1-707.

Federal waterfowl and wildlife area acquisitions — hearings, 87-1-713, 87-1-714.

Taking fish or game for scientific purposes, 87-2-806, 87-5-109.

Taking migratory game birds for propagation — avicultural permit, 87-2-807.

Protection of wild birds and their nests and eggs, 87-5-201.

87-5-401. Creation of game preserves and general provisions. (1) There are game preserves within the state for the better protection of all the game animals and birds within their limits. Except as otherwise provided in this part, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or to carry firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R.C.M. 1921; re-en. Sec. 3761, R.C.M. 1935; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949; amd. Sec. 44, Ch. 511, L. 1973; amd. Sec. 50, Ch. 9, L. 1977; R.C.M. 1947, 26-1101; amd. Sec. 1, Ch. 18, L. 1981.

87-5-402. Posting of notice and additional provisions. (1) Preserves, refuges, sanctuaries, rest grounds, or closed districts made or created by said department and any land or water areas or portions thereof closed by said department shall be conspicuously posted for a period of 20 days, with posters setting forth their purposes and the penalties for violating the orders and rules and regulations of the department applicable to them. Not less than 20 days before any fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said department, or closure of land or water areas becomes effective, publication shall be made as provided in 87-1-202 of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said department, such boundaries to be accurately designated by definite topographic monuments or public land survey.

(2) The hunting, pursuing, capturing, killing, or taking of any fish, game animals, game birds, or fur-bearing animals in violation of the rules, regulations, or orders of the department governing any closed season, fish and game district, refuge, sanctuary, preserve, rest ground, or closed land or water area promulgated by said department shall be punishable with the same penalties as provided for the violation of the state fish and game laws of this state regarding closed seasons.

(3) All game preserves or refuges heretofore created are continued in full force and effect until such time as the same are changed by the department in the manner herein designated. Said department shall have the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, excepting the Sun River game preserve, when, in the opinion of said department, it is to the best interest so to do.

History: En. Sec. 27, Ch. 193, L. 1921; re-en. Sec. 3676, R.C.M. 1921; amd. Sec. 1, Ch. 87, L. 1933; re-en. Sec. 3676, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1937; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-127.

Cross-References

Definition of enter or remain unlawfully, 45-6-201.

87-5-403. Sun River game preserve. There is a Sun River game preserve described as follows: beginning at a point on the continental divide of the Rocky Mountains, due south of the head or source of the south fork of the north fork of Sun River, in what will be, when surveyed, section 8, township 18 north of range 10 west, Montana meridian; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun River; thence northerly along and down the course of the south fork of the north fork of Sun River as it winds and turns to its confluence with the north fork of the north fork of Sun River; thence northerly along the course of the north fork of the north fork of Sun River as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky Mountains; thence along the crest of the continental divide of the Rocky Mountains southwesterly and southerly to the place of beginning, intending hereby to include in said game preserve all that territory lying between the south fork of the north fork and the north fork of the north fork of Sun River on the east and the continental divide of the Rocky Mountains on the west.

History: En. Sec. 1, Ch. 34, L. 1913; re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3763, R.C.M. 1921; re-en. Sec. 3763, R.C.M. 1935; amd. Sec. 26, Ch. 9, L. 1977; R.C.M. 1947, 26-1102.

87-5-404. Flathead Lake bird preserve — university of Montana-Missoula biological reserve. (1) Those islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands situated in Flathead Lake in the county of Flathead, Montana, according to the official plat and survey of the land returned to the general land office by the surveyor general, are a perpetual place of refuge for birds of all kinds, and those lands are to be called the "Flathead Lake bird preserve". The lands are reserved for the breeding, propagating, and protection of all species of birds.

(2) It is unlawful for any person to hunt, as defined in 87-2-101, or destroy or in any way injure any bird on the islands or to interfere with their eggs or nests or to hunt any bird within a distance of 400 yards from the shoreline of the islands.

(3) It is unlawful for any person to hunt, as defined in 87-2-101, or destroy or in any way injure any bird or animal on the university of Montana-Missoula biological reserve located on the east shore of Flathead Lake or to interfere with their eggs or their young or their nests or to hunt any bird or any animal within 400 yards of the university of Montana-Missoula biological reserve or to discharge any firearms on the reserve or within 400 yards of the reserve.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3768, R.C.M. 1921; re-en. Sec. 3768, R.C.M. 1935; R.C.M. 1947, 26-1107; amd. Sec. 35, Ch. 417, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Regulation of bird reserve in Flathead County, 87-1-706.

87-5-405. Teton-Spring Creek bird preserve — special archery season. (1) For the better protection and propagation of birds, the following described area in Teton County, state of Montana, is hereby set aside and established as a state bird preserve, to be known as the Teton-Spring Creek bird preserve: All of sections 2, 3, 4, 9, 10, 11, 12, 13, 14, and 15 in township 24 north, range 5 west.

(2) The department may open all or part of the Teton-Spring Creek bird preserve for a special archery season in accordance with 87-1-304 and 87-2-708.

History: En. Sec. 1, Ch. 33, L. 1923; re-en. Sec. 3776.3, R.C.M. 1935; R.C.M. 1947, 26-1116; amd. Sec. 2, Ch. 18, L. 1981.

87-5-406. Gates of the Mountains game preserve. (1) Beginning in section 2, township 12 north, range 3 west, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon road, then northerly along the powerline to the beacon, then along the bulldozer road to the point of the ridge in section 23, township 13 north, range 3 west, then northerly to the Missouri River, then easterly across the river and lake to the forest service boundary to the wilderness boundary, then south following the wilderness boundary to the southeast corner of section 1, township 12 north, range 3 west, then west back to the upper Holter Lake to the point of beginning, intending to include in the game preserve all that territory adjacent to the Gates of the Mountains area, is called the Gates of the Mountains game preserve.

(2) It is unlawful for any person to hunt, as defined in 87-2-101, or destroy or in any way injure any bird or fur-bearing animal in the area or to interfere with their eggs or nests or to hunt any bird or fur-bearing animal within the preserve. The area is closed to all hunting at all times.

History: En. Sec. 1, Ch. 115, L. 1971; R.C.M. 1947, 26-1128; amd. Sec. 36, Ch. 417, L. 1995.

Part 5
Stream Protection

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Smith River Management Act, Title 23, ch. 2, part 4.

Streambed protection, Title 75, ch. 7, part 1.

Water rights, Title 85, ch. 2, part 2.

River restoration program, 87-1-257 through 87-1-259.

Future fisheries improvement program, 87-1-272, 87-1-273.

87-5-501. State policy. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

History: En. Sec. 1, Ch. 10, L. 1965; R.C.M. 1947, 26-1501.

87-5-502. Notice of construction or hydraulic projects. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the department on forms furnished by the department as soon as preliminary plans are completed but not less than 60 days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect any such stream in any manner specified above.

History: En. Sec. 2, Ch. 10, L. 1965; amd. Sec. 1, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1502.

Cross-References

"Person" subject to The Natural Streambed and Land Preservation Act of 1975 not covered under this section, 75-7-103.

87-5-503. Investigation of construction plans. The department shall promptly examine and investigate all such plans. Should the department determine the plans and specifications furnished with any such application technically insufficient, the department shall so notify the applicant and may render aid in preparing adequate plans and specifications.

History: En. Sec. 3, Ch. 10, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1503.

87-5-504. Notice of department findings and alternative plans. Within 30 days after the receipt of such plans, the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

History: En. Sec. 4, Ch. 10, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1504.

87-5-505. Arbitration of disputes. (1) If the department notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within 15 days after receiving the recommendations and alternatives of the department, shall notify the department if it refuses to modify its plans in accordance with the recommendations or alternatives. In the event of refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

(2) (a) Upon receipt of a notice of refusal, the department shall determine if it wants the disagreement arbitrated. Within 10 days after an affirmative determination and after notice to the applicant, the department shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within 5 days of receipt of notification, the judges shall appoint three people from the county or counties in which the project is located to an arbitration committee. Within 10 days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two members of the committee. The decision shall be binding on all parties concerned.

(b) Travel expenses of the arbitrators shall be allowed as in 2-18-501 through 2-18-503, as amended, and shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965; amd. Sec. 2, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 5, Ch. 453, L. 1977; R.C.M. 1947, 26-1505.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

87-5-506. Vested water rights preserved and emergency actions excepted. This part shall not operate or be so construed as to impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States or operate in emergencies such as floods, ice jams, or other conditions causing emergency handling.

History: En. Sec. 6, Ch. 10, L. 1965; R.C.M. 1947, 26-1506.

87-5-507. Irrigation projects excepted. This part shall not apply to any irrigation district project or any other irrigation system.

History: En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971; R.C.M. 1947, 26-1507.

87-5-508. Federal actions injuring fish and wildlife. The department shall observe acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will, or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such information, the department shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. The department shall keep complete files and records, available for public inspection, of all matters and things done and all communications and correspondence sent and received pursuant to this section.

History: En. Sec. 4, Ch. 133, L. 1971; amd. Sec. 11, Ch. 417, L. 1977; R.C.M. 1947, 26-1508.

87-5-509. Penalty and restoration. (1) An agency, under 87-5-502, violating provisions of this part shall be assessed a fine of not less than $100 or more than $500 for each day of continuing violation but not more than a total of $1,000.

(2) In addition, at the discretion of the court, the agency shall restore the damaged stream to its prior condition. Employees of an agency acting in the ordinary course of their employment under directions of a superior are not liable for violations under this section.

(3) The department may institute and maintain in the name of the state enforcement proceedings under this section. All fines assessed under this section shall be deposited in the state special revenue fund for the use of the department.

History: En. 26-1509 by Sec. 1, Ch. 339, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1509; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Enforcement power of Department, 87-1-201.

Part 6
Fish and Wildlife Crimestoppers

Part Cross-References

Livestock crimestoppers, Title 81, ch. 6, part 3.

87-5-601. Short title. This part may be cited as the "Fish, Wildlife, and Parks Crimestoppers Act".

History: En. Sec. 1, Ch. 305, L. 1985; amd. Sec. 2, Ch. 393, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 393 inserted "and Parks"; and made minor changes in style. Amendment effective April 28, 1997.

87-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the fish, wildlife, and parks crimestoppers board created in 2-15-3404.

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Program" means the fish, wildlife, and parks crimestoppers program created under 87-5-605.

History: En. Sec. 2, Ch. 305, L. 1985; amd. Sec. 3, Ch. 393, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 393 in definition of Board and program inserted "and parks"; and made minor changes in style. Amendment effective April 28, 1997.

87-5-603. Functions of board. The board shall recommend to the department:

(1) the names of individuals to be rewarded for providing information used in detecting and combating fish, wildlife, and parks-related crimes;

(2) the amount of any reward recommended; and

(3) means for promoting the program.

History: En. Sec. 3, Ch. 305, L. 1985; amd. Sec. 4, Ch. 393, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 393 substituted "fish, wildlife, and parks" for "fish and wildlife"; and made minor changes in style. Amendment effective April 28, 1997.

87-5-604. Expenses of board members. Members of the board are entitled to no salary but are entitled to expenses incurred while on official business, as provided in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 305, L. 1985.

87-5-605. Powers and duties of department — rules. (1) The department shall:

(a) create, maintain, and promote a statewide fish, wildlife, and parks crimestoppers program in order to assist law enforcement agencies in detecting and combating fish, wildlife, and parks-related crimes; and

(b) consider the board's recommendations and take action on them.

(2) The department may:

(a) advise and assist in the creation and maintenance of local programs, including neighborhood watch programs;

(b) encourage the channeling of information from state and local programs to law enforcement agencies;

(c) foster the detection of fish, wildlife, and parks-related crimes by the public;

(d) encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of fish, wildlife, and parks-related crimes;

(e) promote state and local programs through the media;

(f) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

(g) adopt rules necessary to administer the provisions of this part.

History: En. Sec. 5, Ch. 305, L. 1985; amd. Sec. 5, Ch. 393, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 393 throughout section, in four places, substituted "fish, wildlife, and parks" for "fish and wildlife"; in (2)(a) inserted "including neighborhood watch programs"; and made minor changes in style. Amendment effective April 28, 1997.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-606. Confidentiality. The identity of a person submitting information under the program and any information that may lead to the disclosure of such identity is confidential.

History: En. Sec. 6, Ch. 305, L. 1985.

Part 7

Importation, Introduction, and Transplantation of Wildlife

Part Cross-References

Importation, introduction, or transplantation of wildlife — unlawful, 87-3-105.

Felony sale or possession of wildlife — penalty, 87-3-118.

87-5-701. Purpose. The legislature finds that in order to protect the native wildlife and plant species of Montana and to protect the agricultural production of Montana, it is necessary to provide for the control of the importation for introduction and the transplantation or introduction of wildlife in the state. Serious threats, known and unknown, to the well-being of native wildlife and plant species and to agricultural production, resulting from the introduction of wildlife into natural habitats, necessitate the prohibition of the importation for introduction and the transplantation or introduction of wildlife into natural habitats unless it can be shown that no harm will result from such transplantation or introduction. Any importation for introduction or the transplantation or introduction permitted must be conducted in a manner to assure that the introduced or transplanted population can be controlled if harm arises from unforeseen effects.

History: En. Sec. 2, Ch. 624, L. 1985.

87-5-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Feral" means the appearance in a natural habitat of an animal that has escaped domestication and become wild.

(2) "Importation" means the act of bringing into the state any wildlife.

(3) "Introduction" means the release of or attempt to release, intentional or otherwise, wildlife from outside the state into natural habitats of the state.

(4) "Natural habitat" means any area in which the introduction of wildlife species may result in an uncontrolled, naturally reproducing population of that species becoming established.

(5) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into natural habitats in another part of the state.

(6) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or the egg or offspring thereof.

History: **En. Sec. 3, Ch. 624, L. 1985.**

87-5-703. Applicability to other provisions for importation or introduction of wildlife. Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to the importation of wildlife for the commercial pet trade or to the provisions on importation or introduction of wildlife contained in the following laws:

(1) Title 80;

(2) 87-3-207 and 87-3-208;

(3) 87-3-221 through 87-3-224 or 87-3-209, 87-3-210, and 87-3-225 through 87-3-227;

(4) 87-4-422;

(5) 87-5-112;

(6) 87-5-205;

(7) 87-5-302; or

(8) Title 81, chapter 2.

History: **En. Sec. 11, Ch. 624, L. 1985; amd. Sec. 13, Ch. 376, L. 1989.**

87-5-704. Rulemaking. (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

History: **En. Sec. 10, Ch. 624, L. 1985.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-705 through 87-5-710 reserved.

87-5-711. Control of importation for introduction and transplantation or introduction of wildlife. (1) Except as otherwise provided, the importation for introduction or the transplantation or introduction of any wildlife is prohibited unless the commission determines, based upon scientific investigation and after public hearing, that a species of wildlife poses no threat of harm to native wildlife and plants or to agricultural production and that the transplantation or introduction of a species has significant public benefits.

(2) With regard to the transplantation or introduction of a fish species not previously legally transplanted to a specific water body within the state or not previously legally introduced to the state, the requirement for scientific investigation in subsection (1) may be satisfied only by completion of an environmental review conforming to the provisions of Title 75, chapter 1, part 2.

History: **En. Sec. 4, Ch. 624, L. 1985; amd. Sec. 1, Ch. 501, L. 1991.**

87-5-712. Authority for commission to control importation generally of certain wildlife species. The commission may, after public hearing, list by administrative rule wildlife species prohibited from importation for captive breeding for research or commercial purposes or for the commercial pet trade if the commission finds, based on scientific investigation, that the species, because of behavioral traits or other biological considerations, would not be readily subject to control by man while in captivity or that if released into natural habitat would pose a substantial threat to native wildlife and plants or agricultural production.

History: **En. Sec. 7, Ch. 624, L. 1985.**

87-5-713. Control of wildlife species permitted to be transplanted or introduced. Any wildlife species listed in 87-5-714 or approved by the commission for introduction or transplantation may be introduced or transplanted only subject to a plan developed by the department to assure that the population can be controlled if any unforeseen harm should occur.

History: **En. Sec. 5, Ch. 624, L. 1985.**

87-5-714. Wildlife species authorized for introduction or transplantation. (1) The following wildlife species may be introduced or transplanted by the department based upon scientific investigation and upon approval of the commission:

(a) gray (Hungarian) partridge (Perdix perdix);
(b) chukar partridge (Alectoris chukar);
(c) ring-necked pheasant (Phasianus colchicus);
(d) turkey (Meleagris gallopavo);
(e) rainbow trout (Salmo gairdneri);
(f) golden trout (Salmo aquabonita);
(g) brown trout (Salmo trutta);
(h) brook trout (Salvelinus fontinalis);
(i) lake trout (Salvelinus namaycush);
(j) northern pike (Esox lucius);
(k) black bullhead (Ictalurus melas);
(l) yellow bullhead (Ictalurus natalis);
(m) largemouth bass (Micropterus salmoides);
(n) smallmouth bass (Micropterus dolomieui);
(o) pumpkinseed sunfish (Lepomis gibbosus);
(p) bluegill (Lepomis macrochirus);
(q) green sunfish (Lepomis cyanellus);
(r) rock bass (Ambloplites rupestris);
(s) black crappie (Pomoxis nigromaculatus);
(t) white crappie (Pomoxis annularis);
(u) yellow perch (Perca flavescens);
(v) walleye (Stizostedion vitreum);
(w) cisco (tulibee) (Coregonus artedii);
(x) spottail shiner (Notropis hudsonius);
(y) kokanee salmon (Oncorhynchus nerka);
(z) chinook salmon (Oncorhynchus tshawytscha);
(aa) lake whitefish (Coregonus clupeaformis);
(bb) golden shiner (Notemigonus crysoleucas).

(2) The commission may by rule and subject to the provisions of 87-5-711 authorize the department to transplant or introduce species of wildlife not listed in subsection (1).

History: **En. Sec. 9, Ch. 624, L. 1985.**

87-5-715. Extermination or control of transplanted or introduced wildlife or feral species posing threat. Any wildlife or feral species transplanted or introduced in the state may be exterminated or controlled by the department if the commission determines that the species poses harm to native wildlife or plants or to agricultural production.

History: En. Sec. 6, Ch. 624, L. 1985; amd. Sec. 12, Ch. 376, L. 1989.

87-5-716. Consultation with the departments of agriculture and livestock. The commission and the department shall consult with the departments of agriculture and livestock in all matters relating to the control of wildlife species that may have a harmful effect on agricultural production or livestock operations in the state.

History: En. Sec. 8, Ch. 624, L. 1985.

87-5-717 through 87-5-720 reserved.

87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than $500 or more than $5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend $500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person.

History: En. Sec. 12, Ch. 624, L. 1985; amd. Sec. 2, Ch. 501, L. 1991; amd. Sec. 2, Ch. 223, L. 1993; amd. Sec. 1, Ch. 344, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 344 in (2)(a), in first sentence, substituted "an offense" for "a misdemeanor" and substituted "$5,000 and imprisonment for up to 1 year" for "$1,000 or imprisonment for not more than 6 months, or both" and inserted second and third sentences allowing sentencing court to consider community service in lieu of imprisonment and prohibiting the sentencing court from deferring or suspending $500 of the fine amount.

Cross-References

Fish and wildlife violations — concurrent jurisdiction with Justices' Courts for certain violations, 3-10-303.

TITLES 88 AND 89

RESERVED

TITLE 90

PLANNING, RESEARCH, AND DEVELOPMENT

Ch.
1. Development Coordination.
2. Resource Development and Reclamation.
3. Montana Science and Technology Financing Act. Repealed. July 1, 1999.
4. Energy Development and Conservation.
5. Secondary Industry and Commercial Development.
6. Community Impact — Planning and Abatement.
7. Health Facility Development.
8. Montana Capital Company Act.
9. Agriculture Development.
Chapter 10 reserved.
11. Indian Affairs — Planning and Coordination.
Chapters 12 and 13 reserved.
14. Community Service.
15. Natural Resource Information System.

CHAPTER 1

DEVELOPMENT COORDINATION

Part 1 — Planning and Economic Development

90-1-101. Declaration of necessity and public policy.
90-1-102. Functions of department of commerce — state planning.
90-1-103. Functions of department of commerce — community development.
90-1-104. Functions of department of commerce — recreational development.
90-1-105. Functions of department of commerce — economic development.
90-1-106. Functions of department of commerce — housing.
90-1-107. Contracts and agreements for projects and programs — cooperation with other agencies.
90-1-108. County land planning assistance.
90-1-109. State census and economic information center.
90-1-110 through 90-1-115 reserved.
90-1-116. State matching funds program for economic development — distribution of proceeds — criteria for grants — local economic development matching funds.

Chapter Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.

The Planned Community Development Act of 1973, Title 7, ch. 2, part 47.

Business improvement districts, Title 7, ch. 12, part 11.

Parking, Title 7, ch. 14, part 46.

Urban renewal, Title 7, ch. 15, parts 42 and 43.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

Business incubator tax exemption, Title 15, ch. 24, part 18.

Montana economic development fund, 17-6-331.

Cooperation regarding development of certain parks and historic sites, 23-1-107.

Development of outdoor recreational resources, Title 23, ch. 2, part 1.

Montana development corporation — organization, Title 32, ch. 4, part 2.

Small tract financing, Title 71, ch. 1, part 3.

Montana Environmental Policy Act, Title 75, ch. 1.

Montana Major Facility Siting Act, Title 75, ch. 20.

City-County Planning Boards, Title 76, ch. 1.

Planning and zoning, Title 76, ch. 2.

Comprehensive planning — open space land, Title 76, ch. 6.

Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.

Development of state lands generally, Title 77, ch. 1, part 6.

Mineral, coal, oil, and gas development on state lands, Title 77, ch. 3.

Development of geothermal and hydroelectric resources on state lands, Title 77, ch. 4.

Water resource development, Title 85, ch. 1.

Part 1
Planning and Economic Development

90-1-101. Declaration of necessity and public policy. (1) It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state require that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification of industry and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the overall economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state.

(2) The legislature recognizes that consistency and continuity in the adoption and application of environmental rules are essential to the protection and enhancement of Montana's economic well-being, that consistency and continuity are particularly important to those persons who have made a financial commitment after completing an application for an environmental permit based on the existence of certain environmental rules, and that those persons are entitled to a reasonable expectation that requirements in such a permit will not be changed to their detriment. Therefore, when a person makes a financial commitment after having completed an application for an environmental permit, it is the policy of the state not to change the requirements for such permit to the detriment of the applicant or permittee without having first taken into account and given consideration to previous expenditures made by the applicant or permittee.

(3) The department of commerce shall be regarded as performing a governmental function in carrying out the provisions of 90-1-102 through 90-1-109.

History: En. Sec. 2, Ch. 19, L. 1967; amd. Sec. 82, Ch. 348, L. 1974; amd. Sec. 43, Ch. 213, L. 1975; R.C.M. 1947, 82-3702; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 679, L. 1983.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

Air quality permits, 75-2-211.

Water quality permits, Title 75, ch. 5, part 4.

Montana Major Facility Siting Act, Title 75, ch. 20.

90-1-102. Functions of department of commerce — state planning. The department of commerce shall:

(1) make economic and social studies needed to accomplish the purposes of this part;

(2) coordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(3) assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors that influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(4) provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development that may be relieved by state action;

(5) locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance and make recommendations for protecting and preserving those sites;

(6) apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this part and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(7) serve as the consultative, coordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys and comprehensive plans.

History: En. Sec. 5, Ch. 19, L. 1967; amd. Sec. 83, Ch. 348, L. 1974; amd. Sec. 44, Ch. 213, L. 1975; R.C.M. 1947, 82-3705; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 148, L. 1993.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

Preservation of antiquities, Title 22, ch. 3, part 4.

Cooperation of other agencies, 23-1-107.

Montana development corporation — organization, Title 32, ch. 4, part 2.

Montana Major Facility Siting Act, Title 75, ch. 20.

Planning and zoning, Title 76, ch. 2.

Comprehensive planning — open-space land, Title 76, ch. 6.

Development of state lands, Title 77, ch. 1, part 6.

Development of geothermal and hydroelectric resources on state lands, Title 77, ch. 4.

Water resources, Title 85, ch. 1.

Cooperative agreements for research, training, and other projects, 87-1-210.

90-1-103. Functions of department of commerce — community development. The department of commerce shall:

(1) cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and

encouraging orderly, productive, and coordinated development of the communities of the state;

(2) assist the governor in coordinating the activities of state agencies that have an impact on solution of community development problems and implementation of community plans;

(3) serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses and in providing technical assistance to communities, the department shall pay particular attention to the planning and financing of public facilities and to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(5) administer the federal community development block grant program and adopt rules to implement the program.

History: En. 82-3705.1 by Sec. 84, Ch. 348, L. 1974; amd. Sec. 45, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.1; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 230, L. 1985; amd. Sec. 2, Ch. 148, L. 1993.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Commerce, Title 3, ch. 15, part 18.

The Planned Community Development Act of 1973, Title 7, ch. 2, part 47.

Urban renewal, Title 7, ch. 15, parts 42 and 43.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

City-County Planning Boards, Title 76, ch. 1.

Planning and zoning, Title 76, ch. 2.

90-1-104. Functions of department of commerce — recreational development. The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public;

(3) serve as an ombudsman for the tourism industry and recreationists in all matters concerning the management and regulation of the level of Flathead Lake; and

(4) coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the coordinator of Indian affairs.

History: En. 82-3705.2 by Sec. 85, Ch. 348, L. 1974; amd. Sec. 46, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.2; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 452, L. 1987; amd. Sec. 2, Ch. 301, L. 1991.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

Tourism Advisory Council, 2-15-1816.

Development of outdoor recreational resources, Title 23, ch. 2, part 1.

Acquisition and sale of lands or waters, 87-1-209.

Indian affairs — planning and coordination, Title 90, ch. 11.

90-1-105. Functions of department of commerce — economic development. The department of commerce shall:

(1) provide coordinating services to aid state and local groups and Indian tribal governments in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups and Indian tribal governments seeking new enterprises;

(4) aid communities and Indian tribal governments interested in obtaining new business or expanding existing business;

(5) study and promote means of expanding markets for Montana products;

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state;

(7) explore the use of cooperative agreements, as provided in Title 18, chapter 11, part 1, for the promotion and enhancement of economic opportunities on the state's Indian reservations.

History: En. 82-3705.3 by Sec. 86, Ch. 348, L. 1974; amd. Sec. 47, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.3; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 301, L. 1991.

Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.

Department of Commerce, Title 2, ch. 15, part 18.

Montana University System — agricultural-related research, 20-25-222 through 20-25-232.

Montana development corporation — organization, Title 32, ch. 4, part 2.

Montana Environmental Policy Act, Title 75, ch. 1.

Montana Major Facility Siting Act, Title 75, ch. 20.

Development of state lands, Title 77, ch. 1, part 6.

Mineral, coal, oil, and gas development on state lands, Title 77, ch. 3.

Development of geothermal and hydroelectric resources on state lands, Title 77, ch. 4.

Agricultural marketing, Title 80, ch. 11, part 1.

Wheat research and marketing, Title 80, ch. 11, part 2.

Water resource development, Title 85, ch. 1.

Advice and information by Department of Commerce, 90-5-113.

Indian affairs — planning and coordination, Title 90, ch. 11.

90-1-106. Functions of department of commerce — housing. The department may:

(1) survey and investigate housing needs throughout the state and publish the results and make recommendations to the governor and the legislature as to legislation and other measures necessary, desirable, or advisable to alleviate housing problems;

(2) maintain and disseminate information on available governmental housing assistance programs, eligibility and development requirements, and other similar information; and

(3) promote research and development in housing planning design, production, conservation, rehabilitation, and other matters relating to, or

affecting the provision of decent, safe, and sanitary housing in a suitable living environment.

History: En. 35-526 by Sec. 27, Ch. 461, L. 1975; amd. Sec. 3, Ch. 163, L. 1977; R.C.M. 1947, 35-526.

Cross-References

Urban renewal, Title 7, ch. 15, parts 42 and 43.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

Planning and zoning, Title 76, ch. 2.

90-1-107. Contracts and agreements for projects and programs — cooperation with other agencies. (1) The department of commerce may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to accomplish its own research programs. It may perform research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies shall provide the department with information which will assist it in carrying out this part.

(2) The department shall assist and cooperate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials in carrying out the functions and duties of the department.

(3) It may consult with private groups and individuals, and if the department considers it desirable, hold public hearings to obtain information for the purposes of carrying out this part.

History: En. Sec. 6, Ch. 19, L. 1967; amd. Sec. 87, Ch. 348, L. 1974; R.C.M. 1947, 82-3706; amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

Montana University System — research programs, 20-25-108.

Department of Fish, Wildlife, and Parks to cooperate with other agencies, 23-1-107.

90-1-108. County land planning assistance. (1) The department of commerce shall annually distribute the funds appropriated to it for county land planning. Each county must be allotted an equal percentage of the funds, up to $3,000. After this disbursement has been made, 40% of the balance of the funds must be apportioned among the counties according to the ratio of each county's land area to the total land area of the state and 60% of the balance of the funds must be apportioned among the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use the funds for land planning purposes, which include but are not limited to comprehensive planning, economic development planning, and capital improvements planning.

(3) At the end of each fiscal year, each local governing body and planning agency receiving funds under this section shall provide an accounting of how the money was spent, in a form acceptable to the department of commerce.

History: En. 82-3710 by Sec. 14, Ch. 502, L. 1975; amd. Sec. 4, Ch. 540, L. 1977; R.C.M. 1947, 82-3710; amd. Sec. 1, Ch. 51, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch.

78, L. 1985; amd. Sec. 45, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 199, L. 1995; amd. Sec. 75, Ch. 509, L. 1995.

Cross-References

Allocation of portion of coal severance taxes to credit of county land planning account, 15-35-108(3).

City-County Planning Boards, Title 76, ch. 1.

Planning and zoning, Title 76, ch. 2.

90-1-109. State census and economic information center. The department of commerce shall, in cooperation with other state, federal, and local agencies, establish and maintain a central depository of information, including computer-retrievable files, concerning the significant characteristics of the state, its people, economy, land, and physical characteristics. The department shall analyze and disseminate such information to state, federal, and local agencies and to the general public.

History: En. Sec. 13, Ch. 274, L. 1981; amd. Sec. 3, Ch. 114, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Districting and apportionment, Art. V, sec. 14, Mont. Const.

Public records, Title 2, ch. 6.

Commission to redistrict and reapportion, 5-1-101.

Montana University System — research programs, 20-25-108.

90-1-110 through 90-1-115 reserved.

90-1-116. State matching funds program for economic development — distribution of proceeds — criteria for grants — local economic development matching funds. (1) As used in this section, the following definitions apply:

(a) "Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body and that meets and maintains requirements for certification established by the department.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(2) The department shall create a program to provide state funds to match local economic development funds and to fund the certified communities program. The provision of state matching funds is contingent upon specific appropriations to the department for that purpose. The department shall distribute the funds in the following manner:

(a) 91% to certified community lead organizations, in the form of assistance grants;

(b) 8% to the department for administration of the certified communities program; and

(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.

(3) An assistance grant to a certified community lead organization is based on an annual per capita payment for the area served by the organization, according to its population in the last completed federal census. The grant may not exceed $75,000 and may not be less than $3,000 a year.

(4) To be eligible to receive a grant, a certified community lead organization:

(a) must be designated as the lead organization by the local governing body;

(b) shall maintain department requirements for certification;

(c) shall match each $1 of the grant with $1 raised from public or private sources; and

(d) shall participate in regional meetings of certified communities.

(5) Grants under this section must be used to conduct economic development programs consistent with strategic plans that are adopted by the certified communities and that are filed with the department.

(6) The department shall use its portion of the proceeds to:

(a) administer the certified communities program;

(b) assist noncertified communities in seeking certification; and

(c) organize and conduct regional meetings of certified communities.

History: **En. Sec. 1, Ch. 531, L. 1993.**

CHAPTER 2

RESOURCE DEVELOPMENT AND RECLAMATION

Part 1 — Renewable Resource Development Loans, Grants, and Bonds

90-2-101 through 90-2-104. Repealed.
90-2-105. Repealed.
90-2-106. Repealed.
90-2-107 through 90-2-112. Repealed.
90-2-113. Repealed.
90-2-114 through 90-2-120 reserved.
90-2-121 through 90-2-128. Repealed.
90-2-129 through 90-2-139 reserved.
90-2-140. Energy conservation in agriculture.
90-2-141. State-owned building retrofitting.

Parts 2 through 10 reserved

Part 11 — Reclamation and Development Grants Program

90-2-1101. Short title.
90-2-1102. Policy and purpose.
90-2-1103. Definitions.
90-2-1104. Reclamation and development grants account.
90-2-1105. Adoption of rules.
90-2-1106 through 90-2-1110 reserved.
90-2-1111. State and local grants.
90-2-1112. Eligibility requirements.
90-2-1113. Evaluation criteria — priority.
90-2-1114. Conditions of grants.
90-2-1115 through 90-2-1120 reserved.
90-2-1121. Prohibited compensation to public officers or employees — penalty.

Chapter Cross-References

Classification and alternative management of county lands, Title 7, ch. 8, part 25.

County forests, Title 7, ch. 8, part 26.

County land advisory boards, Title 7, ch. 8, part 27.

Coal tax to alternative energy research and renewable resource development, 15-35-108.

Development of outdoor recreational resources, Title 23, ch. 2, part 1.

Montana development corporation, Title 32, ch. 4.

Forest development road, 61-8-110.

Mortgages, Title 71, ch. 1.

Montana Environmental Policy Act, Title 75, ch. 1.

Environmental contingency grant program, Title 75, ch. 1, part 11.

Clean Air Act of Montana, Title 75, ch. 2.

Financial provisions — water quality, Title 75, ch. 5, part 5.

Flood plain delineation, 76-5-201.

Department of Environmental Quality research and information — water pollution, 75-5-212.

Comprehensive planning — open-space land, Title 76, ch. 6.

Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.

Development, protection, and conservation of forest, range, and water resources, 76-13-104.

Soil conservation — operation of conservation districts, Title 76, ch. 15, part 4.

Cooperative state grazing districts — development of grazing potential, 76-16-305, 76-16-306.

Development of state land resources, Title 77, ch. 1, part 6.

State water plan, 85-1-203.

Renewable resource grant and loan program, Title 85, ch. 1, part 6.

Water leasing program, 85-2-141.

Weather modification activities, Title 85, ch. 3.

Conservancy districts, Title 85, ch. 9.

Wildlife research, 87-1-210.

Fish, Wildlife, and Parks Commission, Title 87, ch. 1, part 3.

Part 1

Renewable Resource Development Loans, Grants, and Bonds

90-2-101 through 90-2-104. Repealed. Sec. 35, Ch. 478, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

90-2-101. En. 89-3601 by Sec. 1, Ch. 533, L 1975; R.C.M. 1945; 89-3601; amd. Sec. 47, Ch. 505, L. 1981.

90-2-102. En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977; R.C.M. 1947, 89-3602(part); amd. Sec. 46, Ch. 298, L. 1983.

90-2-103. En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977; R.C.M. 1947, 89-3602(part); amd. Sec. 1, Ch. 413, L. 1981.

90-2-104. En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(2).

90-2-105. Repealed. Sec. 5, Ch. 51, L. 1979.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(3).

90-2-106. Repealed. Sec. 5, Ch. 51, L. 1979.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(1).

90-2-107 through 90-2-112. Repealed. Sec. 35, Ch. 478, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

90-2-107. En. 89-3605 by Sec. 5, Ch. 533, L. 1975; amd. Sec. 3, Ch. 323, L. 1977; R.C.M. 1947, 89-3605; amd. Sec. 16, Ch. 717, L. 1985.

90-2-108. En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(4) thru (6), (8); amd. Sec. 3, Ch. 583, L. 1991.

90-2-109. En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(7).

90-2-110. En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(10).

90-2-111. En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977; R.C.M. 1947, 89-3604(part); amd. Sec. 48, Ch. 505, L. 1981; amd. Sec. 15, Ch. 418, L. 1987; amd. Sec. 11, Ch. 659, L. 1991; amd. Sec. 1, Ch. 780, L. 1991.

90-2-112. En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977; R.C.M. 1947, 89-3604(part); amd. Sec. 2, Ch. 51, L. 1979; amd. Sec. 47, Ch. 298, L. 1983.

90-2-113. Repealed. Sec. 16, Ch. 418, L. 1987.

History: En. Sec. 2, Ch. 413, L. 1981; amd. Sec. 8, Ch. 171, L. 1983.

90-2-114 through 90-2-120 reserved.

90-2-121 through 90-2-128. Repealed. Sec. 35, Ch. 478, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

90-2-121. En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977; R.C.M. 1947, 89-3606(1) thru (5); amd. Sec. 48, Ch. 298, L. 1983; amd. Sec. 16, Ch. 512, L. 1985.

90-2-122. En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977; R.C.M. 1947, 89-3606(6) thru (8); amd. Sec. 49, Ch. 298, L. 1983.

90-2-123. En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977; R.C.M. 1947, 89-3607(1) thru (3); amd. Sec. 50, Ch. 298, L. 1983; amd. Sec. 17, Ch. 512, L. 1985.

90-2-124. En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977; R.C.M. 1947, 89-3607(4); amd. Sec. 49, Ch. 505, L. 1981; amd. Sec. 51, Ch. 298, L. 1983; amd. Sec. 3, Ch. 2, L. 1987; amd. Sec. 4, Ch. 662, L. 1987.

90-2-125. En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977; R.C.M. 1947, 89-3608(1); amd. Sec. 52, Ch. 298, L. 1983; amd. Sec. 18, Ch. 512, L. 1985.

90-2-126. En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977; R.C.M. 1947, 89-3608(3), (4); amd. Sec. 53, Ch. 298, L. 1983.

90-2-127. En. 89-3609 by Sec. 9, Ch. 533, L. 1975; R.C.M. 1947, 89-3609; amd. Sec. 54, Ch. 298, L. 1983.

90-2-128. En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(9).

90-2-129 through 90-2-139 reserved.

90-2-140. Energy conservation in agriculture. (1) The department of environmental quality is authorized to make grants under its state energy conservation program, approved pursuant to 10 CFR 420.5, to conservation districts for projects that promote energy conservation in agriculture.

(2) The department of environmental quality shall give public notice of opportunity for grants and the criteria to be used for the award of grants. The criteria must include but are not limited to energy savings and consistency with sound water and soil conservation practices.

History: En. Sec. 6, HB 621, L. 1987; amd. Sec. 489, Ch. 418, L. 1995.

90-2-141. State-owned building retrofitting. (1) The department of environmental quality is authorized, in consultation with the department of administration, to train employees in the operation and maintenance of energy saving equipment and in the implementation of energy conserving practices and to make grants to state agencies for energy efficiency analysis of state-owned buildings. The department of environmental quality may also make loans to state agencies for retrofitting state-owned buildings.

(2) The department of environmental quality shall consider simple payback, type of energy saved, results of similar projects, expected life of the retrofit, and use of the retrofit as a model for other buildings in making grants and loans under subsection (1).

History: En. Sec. 7, HB 621, L. 1987; amd. Sec. 490, Ch. 418, L. 1995.

Parts 2 through 10 reserved

Part 11

Reclamation and Development Grants Program

90-2-1101. Short title. This part may be cited as the "Reclamation and Development Grants Program Act".

History: En. Sec. 1, Ch. 418, L. 1987.

90-2-1102. Policy and purpose. (1) The policy of the state of Montana expressed in the Reclamation and Development Grants Program Act is to provide a state capability to fund projects that indemnify the people of the state for the effects of mineral development on public resources and that meet other crucial needs serving the public interest and the total environment of the citizens of Montana.

(2) The purposes of the reclamation and development grants program are to:

(a) repair, reclaim, and mitigate environmental damage to public resources from nonrenewable resource extraction; and

(b) develop and ensure the quality of public resources for the benefit of all Montanans.

History: En. Sec. 2, Ch. 418, L. 1987.

90-2-1103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Financially feasible" means that adequate funds are available to complete the project as approved.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

(5) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(6) "Project" means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(7) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(8) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

(9) "Reclamation and development grants account" means the reclamation and development grants special revenue account established in 90-2-1104.

(10) "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts.

History: En. Sec. 3, Ch. 418, L. 1987; amd. Sec. 32, Ch. 478, L. 1993.

90-2-1104. Reclamation and development grants account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under the provisions of 15-38-106;

(c) the the metal mines license tax proceeds as provided in 15-37-117(1)(e); and

(d) the oil and gas production tax as provided in 15-36-324 and 15-38-106.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects.

History: En. Sec. 4, Ch. 418, L. 1987; amd. Sec. 33, Ch. 478, L. 1993; amd. Sec. 4, Ch. 577, L. 1995; amd. Sec. 308, Ch. 42, L. 1997; amd. Sec. 7, Ch. 444, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (2)(b) substituted "resource indemnity and ground water assessment tax" for "resource indemnity trust tax". Amendment effective March 12, 1997.

Chapter 444 in (2)(b) substituted "resource indemnity and ground water assessment tax" for "resource indemnity trust tax"; inserted (2)(d) requiring money allocated from oil and gas production tax to be paid into reclamation and development grants account; and made minor changes in style. Amendment effective July 1, 1997.

The amendments to this section made by sec. 6, Ch. 120, L. 1997, were rendered void by sec. 7(1), Ch. 542, L. 1997 a coordination section.

90-2-1105. Adoption of rules. The department may adopt rules to:

(1) prescribe the form and content of applications for grants;

(2) describe the terms and conditions of making grants;

(3) prescribe a monitoring program to evaluate the effectiveness of funded projects; and

(4) develop any other procedures necessary to accomplish the objectives of the reclamation and development grants program.

History: En. Sec. 9, Ch. 418, L. 1987; amd. Sec. 34, Ch. 478, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

90-2-1106 through 90-2-1110 reserved.

90-2-1111. State and local grants. (1) Any department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the reclamation and development grants account for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the reclamation and development grants account.

(5) The governor shall submit all proposals, with his recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects.

History: En. Sec. 5, Ch. 418, L. 1987.

90-2-1112. Eligibility requirements. (1) Except as provided under subsection (2), to be eligible for funding under the reclamation and development grants program, the proposed project must provide benefits in one or more of the following categories:

(a) reclamation of land, water, or other resources adversely affected by mineral development;

(b) mitigation of damage to public resources caused by mineral development;

(c) research, demonstration, or technical assistance to promote the wise use of Montana minerals, including efforts to make processing more environmentally compatible;

(d) investigation and remediation of sites where hazardous wastes or regulated substances threaten public health or the environment; and

(e) research to assess existing or potential environmental damage resulting from mineral development.

(2) If sufficient eligible and qualified applications satisfying the mineral development objectives provided for in subsection (1) are not received or if there is a crucial state need, the department may evaluate and the governor may recommend that the legislature approve funding for projects that:

(a) enhance Montana's economy through the development of natural resources; or

(b) develop, promote, protect, or further Montana's total environment and public interest, including the general health, safety, welfare, and public resources of Montana citizens and communities.

(3) To be eligible for funding under the reclamation and development grants program, a project must:

(a) be technically and financially feasible;

(b) be the best cost-effective alternative to address a problem or attain an objective;

(c) comply with statutory and regulatory standards protecting environmental quality; and

(d) be from an applicant able and willing to enter into a contract with the department for the implementation of the proposed project or activity.

(4) A project is not eligible for funding under the reclamation and development grants program to the extent that the project is eligible for and can reasonably be expected to receive funding from other state or federal reclamation programs or any other program or act that provides funding to accomplish remedial action for environmental damage or if the project is permitted under Title 82, chapter 4 or 11.

(5) A proposed project is not eligible for funding under the reclamation and development grants program if there is a liable party who would be relieved of financial or legal responsibility and who can reasonably be expected to be held responsible.

History: En. Sec. 6, Ch. 418, L. 1987.

90-2-1113. Evaluation criteria — priority. (1) Except as provided in subsection (2), the department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(a) the degree to which the project will provide benefits in its eligibility category or categories;

(b) the degree to which the project will provide public benefits;

(c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(d) the degree to which the project will provide for the conservation of natural resources;

(e) the degree of need and urgency for the project;

(f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(h) any other criteria the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed $600,000 in total for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection (a) only for oil and gas reclamation projects. A grant may not be used for personnel costs or general operating expenses of the board of oil and gas conservation.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.

(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).

History: En. Sec. 7, Ch. 418, L. 1987; amd. Sec. 1, Ch. 430, L. 1993.

90-2-1114. Conditions of grants. Disbursement of grant funds under this part is subject to the following conditions which must be met by project sponsors:

(1) A scope of work and budget for the project must be approved by the department. Reduction in the scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed and the commitment must be documented.

(3) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(4) Any other specific requirements must be accomplished as considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or the proposal to the legislature.

(5) State funding for a project under this part is not intended to relieve a liable party from financial or legal responsibility.

History: En. Sec. 8, Ch. 418, L. 1987.

90-2-1115 through 90-2-1120 reserved.

90-2-1121. Prohibited compensation to public officers or employees — penalty. (1) An officer, attorney, or other employee of the department may not directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation received as an officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both. Any fines collected under this section must be deposited in the reclamation and development grants account.

History: En. Sec. 10, Ch. 418, L. 1987; amd. Sec. 309, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in two places before "officer", deleted reference to member and before "the department" deleted "the board or"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Public employees and officers — standards of conduct, Title 2, ch. 2.

Definition of felony and misdemeanor, 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Absolute liability, 45-2-104.

Official misconduct, 45-7-401.

CHAPTER 3

MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT

(Repealed July 1, 1999)

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Part 9 — Medical Research Facility Projects

90-3-901. Medical research facility projects account — allocation of funds — goals and criteria — rulemaking.

Chapter Cross-References

Montana in-state investment, Title 17, ch. 6, part 3.

Authorized investments, 17-6-308.

State census and economic information center, 90-1-109.

Energy development and conservation, Title 90, ch. 4.

Part 1
General Provisions

90-3-101. *(Temporary)* **Short title — findings — purpose.** (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the permanent coal tax trust fund created by Article IX, section 5, of the Montana constitution is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana; and

(e) the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism and a funding source for the board to use in making research and development project loans. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: (3)(a)En. Sec. 1, Ch. 701, L. 1985; amd. Sec. 81, Ch. 83, L. 1989; amd. Sec. 6, Ch. 626, L. 1989; (1)En. Sec. 1, Ch. 316, L. 1989; (2), (3)(b) thru (3)(d)En. Sec. 2, Ch. 316, L. 1989; amd. Sec. 12, Ch. 589, L. 1991; amd. Secs. 5, 12, Ch. 594, L. 1991.

Cross-References

Alternative energy and energy conservation research development and demonstration account established, 90-4-103.

90-3-102. *(Temporary)* **Definitions.** As used in this chapter the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

(2) “Board” means the Montana board of science and technology development provided for in 2-15-1818.

(3) “Company” means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) “Convertible debenture” means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) “Debenture” or “note” means a writing or certificate issued as evidence of debt.

(6) “Department” means the department of commerce created in 2-15-1801.

(7) “Expansion capital project” means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) “Innovative technology” means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) “Matching funds” means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) “Medical facility research and development project” means a research and development project designed to advance the development and operation of facilities that concentrate on fields of medical research involving advanced technology applied to national medical concerns through the financing of personnel, equipment, and operating costs with the goal of establishing the facilities as enduring research organizations in Montana.

(11) “Portfolio company” means a startup or expansion stage company that has received a seed capital project loan from the board.

(12) “Private sector” means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(13) “Research and development project” means a science and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

(14) “Research and development project loan” means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.

(15) “Science and technology development project” means either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

(16) “Science and technology development project loan agreement” or “loan” means an agreement entered into between the board and the loan

recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the board;

(c) provides economic development potential to the state; and

(d) contains the applicable provisions and terms required by this chapter.

(17) "Seed capital project" means a startup capital project or expansion capital project.

(18) "Seed capital project loan" means a science and technology development project loan entered into between the board and a loan recipient for a seed capital project.

(19) "Startup capital project" means a science and technology development project that assists a company in initiating commercial operations.

(20) "State" means the state of Montana.

(21) "Technology transfer" means a two-way process by which ideas or inventions for processes or products developed in a research program, usually on a laboratory or pilot-plant scale, are converted to commercial use.

(22) "Venture capital company" means a partnership, corporation, or other business entity engaged in raising funds from investors and earning a financial return for those investors by making equity or quasi-equity investments in new or expanding business.

(23) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 2, Ch. 701, L. 1985; amd. Sec. 17, Ch. 316, L. 1989; amd. Sec. 1, Ch. 566, L. 1991; amd. Sec. 6, Ch. 594, L. 1991; amd. Sec. 3, Ch. 331, L. 1993.

90-3-103. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 11, Ch. 701, L. 1985.

Part 2

Science and Technology Development Board

90-3-201. *(Temporary)* **Organization.** In addition to the chairmanship, the board may establish other offices and select board members to fill these offices. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 5, Ch. 701, L. 1985.

90-3-202. *(Temporary)* **Meetings.** The board shall meet quarterly and at other times to be determined by the chairman or a majority of the board, subject to the availability of funds. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 4, Ch. 701, L. 1985.

90-3-203. *(Temporary)* **Powers and duties of board.** The board shall:

(1) make loans in science and technology development projects pursuant to the provisions of this act in the following areas that have potential to stimulate economic development in Montana:

(a) research capability development;

(b) applied technology research;

(c) technology transfer and assistance; and

(d) startup capital or expansion capital projects for development and commercialization of innovative products and processes;

(2) accept grants or receive devises of money or property to be used in Montana for loans made pursuant to this chapter; and

(3) submit to the governor by January 1 of each odd-numbered year or when otherwise requested by the governor a report describing the board's programs and accomplishments. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 6, Ch. 701, L. 1985; amd. Sec. 22, Ch. 461, L. 1987; amd. Sec. 18, Ch. 316, L. 1989; amd. Sec. 62, Ch. 112, L. 1991; amd. Sec. 52, Ch. 349, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

90-3-204. *(Temporary)* **Rulemaking authority.** The board shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(1) governing the conduct of board business;

(2) establishing application procedures that, at a minimum, require the submittal of:

(a) an executive summary for a science and technology development project loan;

(b) a business plan for a seed capital project loan;

(c) a research and development project proposal for a research and development project loan; and

(d) other documents necessary to meet the criteria established in this chapter;

(3) establishing the procedures to be followed by the board in its review process prior to making a science and technology development project loan; and

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the board that may be required in a science and technology development project loan agreement. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 3, Ch. 316, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Investments — Appropriations

90-3-301. *(Temporary)* **Spending authority and funding — matching funds.** (1) The board has authority to accept and expend all funds received by it as grants, donations, or other private or public income.

(2) The appropriations and loans made to and by the board are in addition to and separate from general fund appropriations to the university system and other state agencies.

(3) A loan may not be made for a seed capital project for which matching funds have not been received. Matching funds are required prior to any

expenditure of board funds for all seed capital projects. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds, depending on the capital need and the degree of risk encountered in the seed capital project.

(4) A loan may not be made for a research and development project for which matching funds have not been received unless the matching fund requirements are waived by the board pursuant to this section. Matching funds, when required, must be received before expenditure of board funds for a research and development project loan may be made. The board may waive the required match for up to 25% of the funding for research and development project loans if the board determines that the capital need and potential commercialization of the research and development project, in addition to its potential to strengthen the partnership between the public sector and private sector, warrant the waiver. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds depending on the capital need in the research and development project. *(Repealed effective July 1, 1999—Secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 8, Ch. 701, L. 1985; amd. Sec. 19, Ch. 316, L. 1989; amd. Sec. 7, Ch. 594, L. 1991; amd. Sec. 63, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 in (1) deleted second sentence that read: "These funds are statutorily appropriated as provided in 17-7-502." Amendment effective July 1, 1997.

90-3-302. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 9, Ch. 701, L. 1985; amd. Sec. 23, Ch. 461, L. 1987.

90-3-303. *(Temporary)* **Investments to board members prohibited.** (1) Board members may not personally apply for or receive board funds, except as provided in 2-15-124. If an organization with which a member is affiliated applies for board funds, the member must disclose the nature of the affiliation and may not participate in the decisionmaking process of the board regarding the application.

(2) The provisions of 2-2-201 do not apply to board members. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 7, Ch. 701, L. 1985.

90-3-304. *(Temporary)* **Accountability — audits.** The board's books and records must be audited by or at the direction of the legislative auditor. The legislative auditor shall conduct a performance audit of the board's goals, objectives, and statutory duties prior to the 52nd legislative session and at times determined necessary by the legislative audit committee. The actual costs of audits must be paid from the board's funds. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 10, Ch. 701, L. 1985; amd. Sec. 24, Ch. 461, L. 1987; amd. Sec. 20, Ch. 316, L. 1989.

Cross-References

Legislative Auditor — powers and duties, 5-13-304.

90-3-305. *(Temporary)* **Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

(3) The department may use all payback funds deposited in the account to cover administrative costs of programs authorized under this chapter. Payback funds must be used to cover administrative costs before the funds received from the board of investments under 17-6-201(8) are used. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 15, Ch. 316, L. 1989; amd. Secs. 8, 12, Ch. 594, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. January 1992; amd. Sec. 4, Ch. 331, L. 1993.

Part 4

Science and Technology Development Seed Capital Fund Bonds

(Repealed. Sec. 24, Ch. 316, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

90-3-401 through 90-3-420. En. Sec. 1 through 20, Ch. 461, L. 1987.

Part 5

Science and Technology Development Project Loan Program

90-3-501. *(Temporary)* **Science and technology development project — priorities.** (1) The board shall make a loan for a science and technology development project if it determines that the project has potential to stimulate economic development in this state and meets the loan criteria established in this chapter.

(2) The board shall give priority to project proposals that it determines incorporate innovative technologies and involve, but are not limited to, one or more of the following target technologies:

(a) mineral technology;
(b) agricultural technology;
(c) forestry technology;
(d) energy technology;
(e) materials sciences;
(f) information sciences;
(g) biotechnology;
(h) microelectronics and computer sciences; or
(i) hazardous waste treatment and disposal.

(3) The board may use up to 25% of the funds for seed capital project loans to make seed capital project loans that do not address the innovative technologies listed in subsection (2). *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 4, Ch. 316, L. 1989; amd. Sec. 2, Ch. 566, L. 1991.

90-3-502. *(Temporary)* **General criteria underlying science and technology development project loan program.** The board may make a science and technology development project loan only upon a favorable determination that the proposed project:

(1) is consistent with the findings and purposes of this chapter because it incorporates innovative technology;

(2) has prospects for collaboration between the public and private sectors of the state's economy;

(3) has prospects for achieving commercial success and for creating new jobs in the state;

(4) has potential for commercial success related to the specific product or business development methodology proposed;

(5) can provide matching funds to the project as required under 90-3-301; and

(6) has a management structure that allows ongoing postdisbursement involvement by the board. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 5, Ch. 316, L. 1989.

90-3-503. *(Temporary)* **Seed capital project — goals.** (1) The board may make a seed capital project loan in a company upon a determination by the board that the project meets the loan criteria established in 90-3-502 and 90-3-504 and that the project meets the goals established in subsection (2) and involves the development and commercialization of innovative products or processes.

(2) The goals in making a seed capital project loan are:

(a) to assist the development of innovative technology in the state by providing a source of capital to the technology-based entrepreneurial sector in the state's economy;

(b) to provide financing and follow-along management support for entrepreneurial companies in the state that are attempting to develop products or processes based on innovative technologies; and

(c) to provide a liaison between entrepreneurial companies in the state and other investors in an effort to enhance the pool of capital available to technology-based companies in the state. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 6, Ch. 316, L. 1989.

90-3-504. *(Temporary)* **Specific criteria for seed capital project loans.** The board may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in 90-3-502 and 90-3-503 and the board further determines that:

(1) the project develops or employs innovative technology to produce a product or process that promises a significant competitive advantage;

(2) the project provides an opportunity to preserve the principal of the loan amount and earn a monetary return;

(3) the project has potential to realize substantial growth in sales and a sales revenue level that provides the capacity to meet the board's payback requirements;

(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's basic industries;

(6) the company's management team possesses sufficient business experience to enable the company to reach its commercial potential;

(7) the company has a strong potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's product or process is targeted for a sizeable commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) the company's business plan is sufficiently designed to complete financing, marketing, and production objectives to accomplish the proposed commercialization. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 7, Ch. 316, L. 1989.

90-3-505. *(Temporary)* **Research and development project — goals.** (1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in 90-3-502 and 90-3-506 and that the project meets one of the goals established in subsection (2).

(2) The goals of the research and development project loan program are:

(a) to significantly upgrade existing research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to:

(i) advance technology development in the state; or

(ii) be readily commercialized upon completion of the research phase;

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace; or

(d) to enhance the competitiveness of Montana's small and medium-sized firms in the national and international markets by stimulating the productivity and modernization of the firms.

(3) These goals may be accomplished by:

(a) supporting the advanced technology centers of excellence program that will institutionalize cooperative arrangements between the public sector and the private sector and significantly build on existing research and development capabilities;

(b) providing financial support for individual research and development projects that are at a preprototype or early stage but that hold significant potential for future commercial success;

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel and for the development of a university-based technology transfer program;

(d) facilitating the flow of information to technology-based entrepreneurial businesses in the state to assist those businesses in reaching their full commercial potential;

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes; or

(f) fostering competitiveness, productivity, and modernization of Montana firms, farms, ranches, mills, and mines. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 8, Ch. 316, L. 1989; amd. Sec. 5, Ch. 331, L. 1993.

90-3-506. *(Temporary)* **Specific criteria for research and development project loans.** The board may make a research and development project loan upon its determination that the proposed project complies with the criteria and goals set forth in 90-3-502 and 90-3-505 and if the board determines that:

(1) the project has the potential to diversify or add value to a basic industry of the state's economy;

(2) the project demonstrates a clear path to commercial development of the research results within the state;

(3) the project involves university system research participation whenever practical;

(4) the project employs or otherwise takes advantage of existing research and development strengths within the state's university and private research establishments;

(5) the project involves a realistic and achievable research project design;

(6) the project develops or employs an innovative technology;

(7) the project activity is located within the state; and

(8) the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objectives of the project. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 9, Ch. 316, L. 1989.

90-3-507 through 90-3-518 reserved.

90-3-519. *(Temporary)* **Venture capital companies.** The board may make up to $2 million of its funds available under 17-6-308 for seed capital project loans to venture capital companies in order to further the development of seed capital resources available for investment in technology-oriented business development and expansion activities if the venture capital companies meet the criteria in subsections (1) and (2):

(1) Venture capital companies must be selected for loans by the board on the basis of the demonstrated ability of the companies' principals to make sound investments and the principals' business development experience.

(2) The company has raised or is in the process of raising its investment capital under the terms of a prospectus or other offering document that gives the board assurance that the company:

(a) is in compliance with the United States securities and exchange commission and Montana securities laws and regulations applicable to venture capital companies;

(b) will use equity or quasi-equity investment mechanisms for at least three-fourths of its investments and will not use conventional secured debt mechanisms for more than one-fourth of its investments;

(c) will otherwise conduct its investment strategy and investment management practices in a manner that conforms to standard venture capital industry practices; and

(d) has a management team that will dedicate the equivalent of at least one full-time manager to the operation of the company.

(3) The board may adopt rules governing loans to venture capital companies to implement the terms of this section and to ensure that the loans meet the requirements of 90-3-501 through 90-3-504. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 5, Ch. 566, L. 1991.

90-3-520. *(Temporary)* **Seed capital project loan agreement with venture capital company.** A seed capital project loan agreement with a venture capital company must contain the following terms:

(1) a loan amount that may not be less than $500,000 or more than $1 million; and

(2) payback provisions:

(a) that are structured as contracted debt;

(b) that allow debt to be repaid in portions of the original loan amount or as interest on the original loan amount in the same proportion as any paybacks made to the other investors or lenders that make up the remaining capitalization of the venture capital company, based upon the original capital invested in or loaned to the venture capital company by the other investors or lenders;

(c) that are not more or less favorable than the repayment and earnings provisions applicable to other investors or lenders that make up the remaining capitalization of the venture capital company; and

(d) that are based on a term no greater than 12 years. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 6, Ch. 566, L. 1991.

90-3-521. *(Temporary)* **Science and technology development project loans — board action.** (1) If the board determines that a science and technology development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the board, the board may enter into a science and technology development project loan agreement with the loan recipient and authorize the disbursement of funds to the loan recipient.

(2) All decisions of the board are final and not subject to the contested case provisions of Title 2, chapter 4. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 10, Ch. 316, L. 1989.

90-3-522. *(Temporary)* **Science and technology development project loan agreement.** (1) The board shall enter into a science and technology development project loan agreement with a loan recipient whose product or process will be developed and commercialized as a result of a science and technology development project loan.

(2) The loan agreement, at a minimum, must contain the following provisions:

(a) the project budget;

(b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved in each phase of the project at designated times;

(c) the reporting requirements, including but not limited to:

(i) quarterly financial statements;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan;

(e) the payback to the board;

(f) the causes for loan revocation, suspension, or termination; and

(g) the intellectual property provisions, when applicable. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 11, Ch. 316, L. 1989; amd. Sec. 3, Ch. 566, L. 1991.

90-3-523. *(Temporary)* **Seed capital project loan agreement — specific requirements — payback.** (1) Except as provided in 90-3-519, in addition to the loan agreement provisions required in 90-3-522, a seed capital project loan must be structured as contracted debt that includes but is not limited to the following terms:

(a) an interest rate set at the level that provides a return to the board, from paybacks by all of its portfolio companies, in an amount at least equal to the principal amount of the loans and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

(c) a loan amount that may not exceed $350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period unless the board determines that there is an overriding financial benefit to the board's portfolio. The total amount that may be loaned to any one company may not exceed 10% of the seed capital funds managed by the board.

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company.

(2) (a) In addition to the provisions in 90-3-522 and subsection (1) of this section, a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b) The board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 12, Ch. 316, L. 1989; amd. Sec. 4, Ch. 566, L. 1991; amd. Sec. 6, Ch. 331, L. 1993.

90-3-524. *(Temporary)* **Research and development project loan agreement — specific requirements — payback.** In addition to the loan agreement provisions described in 90-3-522, a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of at least two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing as negotiated by the parties.

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. The payback on a research and development project loan for a technology transfer and assistance project made from the permanent coal tax trust fund may not be repaid in terms of indirect benefits.

(3) The agreement between the board and the commissioner of higher education on the payback of a research and development project loan must guarantee a minimum annual payback of $250,000, commencing on June 30, 1994. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 13, Ch. 316, L. 1989; amd. Secs. 9, 12, Ch. 594, L. 1991; amd. Sec. 7, Ch. 331, L. 1993.

90-3-525. *(Temporary)* **Deposit of payback.** (1) The payback of principal and earnings on a research and development project loan from a source other than the Montana permanent coal tax trust fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the department to cover the administrative costs of loans made pursuant to this chapter. The paybacks include all those received after January 1, 1989.

(3) All paybacks of earnings to the board from loan agreements using permanent coal tax trust funds must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 to pay the department's administrative and accounting costs associated with the loans. The balance must be deposited to the permanent coal tax trust fund within 30 days. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 14, Ch. 316, L. 1989; amd. Sec. 13, Ch. 589, L. 1991; amd. Secs. 10, 12, Ch. 594, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. January 1992; amd. Sec. 8, Ch. 331, L. 1993.

Parts 6 through 8 reserved

Part 9
Medical Research Facility Projects

90-3-901. *(Temporary)* **Medical research facility projects account — allocation of funds — goals and criteria — rulemaking.** (1) There is a medical research facility projects account in the state special revenue fund into which must be deposited the money appropriated in section 1, Chapter 634, Laws of 1989.

(2) Notwithstanding any provision of Title 90, chapter 3, the Montana science and technology development board may award grants of the money appropriated under section 1, Chapter 634, Laws of 1989, for the purposes described in that section.

(3) The board may award a grant to a medical research facility project if the project proposal meets the following goals:

(a) The project is designed to establish an advanced medical research facility that will be funded sufficiently to become an enduring research presence in the state.

(b) The project concentrates on fields of medical research that involve advanced technology applied to national medical concerns.

(c) The project is designed to recruit and retain in the state medical researchers of nationally recognized stature.

(4) The board, at a minimum, shall use the following criteria in awarding a medical research facility grant:

(a) State funds for construction, equipment, and startup operating costs must be matched on at least a 2 ½-to-1 federal-to-state matching basis with federal funds appropriated for the same purpose.

(b) The project proposal includes an effective construction and operating plan that provides a sound basis for ongoing operation of the facility.

(c) The personnel, equipment, and research operation of the facility are sufficient to earn and maintain a nationally recognized stature.

(5) The board may adopt rules to implement the purposes of section 1, Chapter 634, Laws of 1989, and this section. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 2, Ch. 634, L. 1989; amd. Sec. 1, Ch. 429, L. 1991.

Cross-References

Fund structure, 17-2-102.

CHAPTER 4
ENERGY DEVELOPMENT AND CONSERVATION

Part 1 — Renewable Energy Sources Research and Development

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Part 5 — Residential Conservation Service (Repealed. Sec. 1, Ch. 184, L. 1993)

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90-4-603 and 90-4-604 reserved.
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90-4-606. Program report and recommendations.
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90-4-608 through 90-4-610 reserved.

90-4-611. Authority to issue energy conservation program bonds.
90-4-612. Form — principal and interest — fiscal agent — deposit of proceeds.
90-4-613. Use of energy conservation program account.
90-4-614. Appropriation of energy cost savings.

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Part 9 — Clean Coal Technology Program
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Part 10 — State Energy Policy—Goal and Development Process

90-4-1001. State energy policy goal statement.
90-4-1002. Definitions.
90-4-1003. Energy policy development process.
90-4-1004. Terminated.
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90-4-1010. Transportation energy policy.
90-4-1011. Alternative fuels policy — implementing guidelines.

Chapter Cross-References

Credit for energy-conserving investments, 15-30-125.

Credit for energy-conserving expenditures, 15-32-109.

Tax credit for installing alternative energy system, Title 15, ch. 32, part 2.

Montana Environmental Policy Act, Title 75, ch. 1.

Water quality, Title 75, ch. 5.

Solid waste management or material recycling, Title 75, ch. 10.

Montana Major Facility Siting Act, Title 75, ch. 20.

Geothermal resources, Title 77, ch. 4, part 1.

Power sites on state lands, 77-4-204.

Water resource development, Title 85, ch. 1.

Part 1
Renewable Energy Sources Research and Development

Part Cross-References

Energy-related and ecological tax incentives, Title 15, ch. 32.

Tax credit for installing alternative energy system, Title 15, ch. 32, part 2.

Coal tax to alternative energy research and renewable resource development, 15-35-108.

Department of Natural Resources and Conservation — duties of development, protection, and conservation of forest, range, and water resources, 76-13-104.

90-4-101. Purpose. The purposes of this part are to stimulate research, development, and demonstration of energy conservation and of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability and to provide for the funding and administration of such research. Furthermore it is the purpose of this part to stimulate the commercialization of alternative renewable energy and to allow the department to make loans through financial institutions in Montana for this purpose.

History: En. 84-7407 by Sec. 1, Ch. 501, L. 1975; R.C.M. 1947, 84-7407; amd. Sec. 1, Ch. 624, L. 1979; amd. Sec. 1, Ch. 356, L. 1981; amd. Sec. 1, Ch. 98, L. 1983.

Cross-References

Tax credit for installing alternative energy system, Title 15, ch. 32, part 2.

Coal tax to alternative energy research and renewable resource development, 15-35-108.

Financial Institutions, Title 32.

Montana Environmental Policy Act, Title 75, ch. 1.

Solid waste management or material recycling, Title 75, ch. 10.

Department of Natural Resources and Conservation — duties of development, protection, and conservation of forest, range, and water resources, 76-13-104.

Geothermal resources, Title 77, ch. 4, part 1.

Water resource development, Title 85, ch. 1.

90-4-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, that is capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Department" means the department of environmental quality.

(3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(4) "Person" means a natural person; a corporation, partnership, or other business entity; an association, trust, or foundation; any educational or scientific institution; or any governmental unit.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office of the supreme court.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a).

History: En. 84-7408 by Sec. 2, Ch. 501, L. 1975; R.C.M. 1947, 84-7408; amd. Sec. 2, Ch. 98, L. 1983; amd. Sec. 1, Ch. 730, L. 1985; amd. Sec. 491, Ch. 418, L. 1995.

90-4-103. Alternative energy and energy conservation research development and demonstration account established — allocation of funds. (1) There is within the state special revenue fund an alternative energy and energy conservation research development and demonstration account. Money is paid into this account from repayments of grants and loans previously awarded from this account. The state treasurer shall draw warrants payable from this account upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

(a) grants under 90-4-104 and 90-4-106;

(b) loans under 90-4-104 and 90-4-106;

(c) grants to state governmental units under 90-4-109;

(d) program administration; and

(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project.

History: (1)En. 84-7409 by Sec. 3, Ch. 501, L. 1975; R.C.M. 1947, 84-7409; amd. Sec. 3, Ch. 98, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; (2), (3)En. Sec. 4, Ch. 8, Sp. L. June 1986; amd. Secs. 2, 7, Ch. 626, L. 1989; amd. Sec. 492, Ch. 418, L. 1995.

Cross-References

Fund structure, 17-2-102.

90-4-104. General powers of department. The department may:

(1) employ a staff adequate to administer this part;

(2) retain professional consultants and advisors;

(3) adopt rules governing applications, granting, administration, and repayment of funds;

(4) adopt rules governing applications for and administration and awarding of loans;

(5) adopt rules governing the application for and administration and awarding of grants to state governmental units under 90-4-109;

(6) adopt rules governing the repayment of grants to state governmental units and the reduction of agency budgets under 90-4-109;

(7) consider applications and award grants or loans, subject to the availability of funds and to the appropriation of such funds by the legislature, from the alternative energy and energy conservation research development and demonstration funds for projects that will further the purposes of this part;

(8) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy and energy conservation matters. The appointment of any such advisory committee shall be in keeping with 2-15-122.

History: En. 84-7410 by Sec. 5, Ch. 501, L. 1975; R.C.M. 1947, 84-7410; amd. Sec. 2, Ch. 356, L. 1981; amd. Sec. 4, Ch. 98, L. 1983; amd. Sec. 2, Ch. 730, L. 1985; amd. Sec. 1, Ch. 8, Sp. L. June 1986.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

90-4-105. Applications for grants or loans. Any person may apply for a grant to enable him to research, develop, or demonstrate energy conservation or alternative renewable energy sources. Any person may apply for a loan to commercialize alternative renewable energy sources. The department shall prescribe the form for applications. Applicants shall describe the nature of their proposed investigations, including practical applications of the possible results and time requirements.

History: En. 84-7411 by Sec. 6, Ch. 501, L. 1975; R.C.M. 1947, 84-7411; amd. Sec. 3, Ch. 356, L. 1981; amd. Sec. 5, Ch. 98, L. 1983.

90-4-106. Criteria for grant or loan awards. The department may award grants or loans to applicants under 90-4-105 in accordance with the following criteria:

(1) A grant may cover a period exceeding 1 year, provided that all funds for the grant must be encumbered or accrued from the program appropriation for the year the grant is authorized.

(2) The department may give preference to projects which are also supported by funding from the federal government or other persons, provided the projects are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy and energy conservation research development and demonstration account for matching moneys in order to support more substantial research or commercialization.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants or loans to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources and energy conservation in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public.

(6) The department may expend or commit available alternative energy and energy conservation research development and demonstration funds. The department may commit funds for demonstration purposes only when in its judgment such expenditures or commitments have good potential for producing savings of nonrenewable energy sources. The department may not commit funds for demonstration purposes when any of the following conditions are present:

(a) previous commitments of a similar nature were not productive;

(b) a similar demonstration has been conducted within close geographic proximity of the geographic location of the proposed demonstration project, other than a project proposed for funding under 90-4-109;

(c) the proposed demonstration project would not further the purpose of this part.

History: En. 84-7412 by Sec. 7, Ch. 501, L. 1975; R.C.M. 1947, 84-7412; amd. Sec. 4, Ch. 356, L. 1981; amd. Sec. 1, Ch. 402, L. 1981; amd. Sec. 6, Ch. 98, L. 1983; amd. Sec. 3, Ch. 730, L. 1985.

Cross-References

Research programs for Montana University System, 20-25-108.

90-4-107. Renumbered 90-4-111 by Code Commissioner, 1985.

90-4-108. Renumbered 90-4-112 by Code Commissioner, 1985.

90-4-109. State governmental unit grants. (1) (a) The department may award grants from the alternative energy and energy conservation research development and demonstration account to state governmental units. These grants must be used to further the purposes of this part by providing money for state governmental units for energy conservation measures.

(b) State governmental units must apply to the department for grants.

(c) The department shall prescribe the form for applications and develop criteria for awarding grants under this section, including provisions requiring matching funds or repayment of grant funds to the alternative energy and energy conservation research development and demonstration account.

(d) Each agency awarded a grant shall either repay the grant or reduce its budget commensurate with the documented energy savings resulting from the grant.

(2) All grants awarded under this section must be administered by the department of administration according to Title 18, chapter 2.

History: En. Sec. 4, Ch. 730, L. 1985; amd. Sec. 2, Ch. 8, Sp. L. June 1986.

90-4-110 reserved.

90-4-111. Biennial report. The department shall monitor the grants awarded under 90-4-106 and 90-4-109 and shall, as requested, report its expenditures and other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded under this part to the environmental quality council.

History: En. 84-7413 by Sec. 8, Ch. 501, L 1975; R.C.M. 1935, 84-7413; amd. Sec. 2, Ch. 402, L. 1981; Sec. 90-4-107, MCA 1983; redes. 90-4-111 by Code Commissioner, 1985; amd. Sec. 3, Ch. 8, Sp. L. June 1986; amd. Sec. 63, Ch. 112, L. 1991; amd. Sec. 54, Ch. 349, L. 1993.

90-4-112. Oversight function of environmental quality council. The department shall submit periodic reports to the environmental quality council established in 5-16-101 for review and evaluation. The environmental quality council shall make such recommendations as it considers necessary to assure the greatest possible benefit of the program to the people of the state as a whole. Such recommendations may include proposals for legislation.

History: En. Sec. 3, Ch. 402, L. 1981; Sec. 90-4-108, MCA 1983; redes. 90-4-112 by Code Commissioner, 1985.

Cross-References

Environmental Quality Council, Title 5, ch. 16; Title 75, ch. 1, part 3.

Part 2
Home Weatherization Programs

Part Cross-References

Authorization for counties to furnish assistance in rehabilitation of private dwellings, 7-15-2120.

Authorization for municipalities to furnish assistance in rehabilitation of private dwellings, 7-15-4103.

Taxation — energy-related incentives — credits and deductions, Title 15, ch. 32.

90-4-201. Weatherization money sources — consolidation. (1) All federal funds and grants available and becoming eligible to Montana under the provisions of the U.S. department of energy low-income weatherization assistance program, the U.S. department of health and human services low-income home energy assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the department of public health and human services.

(2) The department of public health and human services shall allocate and spend for home weatherization programs under this part at least 5% of the funds received from the U.S. department of health and human services low-income home energy assistance program if federal law permits this allocation.

History: En. 35-601 by Sec. 2, Ch. 583, L. 1977; R.C.M. 1947, 35-601; amd. Sec. 9, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1985; amd. Sec. 562, Ch. 546, L. 1995.

Cross-References

Taxation — energy-related incentives, Title 15, ch. 32.

90-4-202. Allocation formula. (1) The department of public health and human services may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) Each of the human resource development councils or other public or nonprofit entities shall receive that fraction of the remaining money as the number of eligible households in its geographic area bears to the total number of eligible households in the state.

(3) The department of public health and human services may transfer weatherization money among the human resource development councils or other public or nonprofit entities if it finds that the money is not being expended in accordance with the terms of the agreements executed to carry out the provisions and purposes of this section and federal laws and regulations.

(4) Each of the human resource development councils or other public or nonprofit entities shall submit plans and proposed agreements to the units of local government in the district for review and comment before the agreements are approved by the department of public health and human services.

History: En. 35-602 by Sec. 3, Ch. 583, L. 1977; R.C.M. 1947, 35-602; amd. Sec. 1, Ch. 521, L. 1979; amd. Sec. 9, Ch. 274, L. 1981; amd. Sec. 2, Ch. 390, L. 1985; amd. Sec. 563, Ch. 546, L. 1995.

Cross-References

Human resource development councils, Title 53, ch. 10, part 5.

90-4-203. Annual allocation. State and federal weatherization funds shall be allocated to local weatherization programs on an annual basis.

History: En. 35-603 by Sec. 4, Ch. 583, L. 1977; R.C.M. 1947, 35-603.

90-4-204 through 90-4-209 reserved.

90-4-210. Policy. As the result of overcharges on the sales of domestic crude oil, the federal courts have ordered or approved settlements requiring the repayment of the total amount of overcharges, plus interest, into an escrow account to be distributed by the U.S. treasury to the states, territories, and possessions of the United States. It is the policy of this state to use the oil overcharge money distributed to the state to supplement state and federal programs that the state administers in a manner consistent with federal court orders establishing or approving the payment of the funds to the state of Montana and in accordance with the precedent established by the U.S. congress in appropriating money to federal programs.

History: En. Sec. 1, HB 621, L. 1987.

90-4-211. Repealed. Sec. 32, Ch. 561, L. 1993.

History: En. Sec. 4(6), HB 621, L. 1987.

90-4-212 through 90-4-214 reserved.

90-4-215. Account established — use. (1) There is created an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

(2) The amounts deposited in the account and interest and earnings on the account are statutorily appropriated, as provided in 17-7-502, to the department of public health and human services to fund its low-income energy assistance and home weatherization programs created in 90-4-201. However, the department may use the principal of the account only if the federal grants for either of those programs is reduced below the federal fiscal year 1987 level. The department may not use the principal to increase expenditures to either program above the level of the federal grant for that program for federal fiscal year 1987.

History: En. Sec. 3, HB 621, L. 1987; amd. Sec. 564, Ch. 546, L. 1995.

Part 3

Energy Supply Emergency Powers

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

90-4-301. Legislative findings and intent. (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, regularly monitor energy supplies and demand, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of this part to:

(a) establish necessary planning, information gathering, and energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide for the regular monitoring of energy supplies and demand; however, nothing in this part may be construed to authorize the establishment of an independent state energy forecasting program; and

(c) provide penalties for violations of this part.

History: En. Sec. 1, Ch. 473, L. 1979; amd. Sec. 1, Ch. 204, L. 1981.

Cross-References

Powers and duties of Governor, 2-15-201.

90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for marketing of petroleum products and that has total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users.

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

(10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

(11) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals.

History: En. Sec. 2, Ch. 473, L. 1979; amd. Sec. 2, Ch. 204, L. 1981; amd. Sec. 74, Ch. 545, L. 1995.

90-4-303. Repealed. Sec. 82, Ch. 545, L. 1995.
History: En. Sec. 3, Ch. 473, L. 1979.

90-4-304. Supply of vital public services during an energy supply alert and energy emergency. The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

History: **En. Sec. 4, Ch. 473, L. 1979.**

Cross-References

Emergency resource management, Title 10, ch. 3, part 5.

90-4-305. Information obtainable by governor. (1) The governor may obtain information on a regular basis from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state that is necessary for the governor to determine the need for energy supply alert and emergency declarations. The information may include but is not limited to:

(a) sales volumes by customer classifications other than for petroleum products;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In order to help anticipate and mitigate the effects of shortages of petroleum products, the governor may monitor the supply of and demand for these products by obtaining the following monthly reports submitted no later than 20 days after the last day of the month, on forms prescribed by the governor, from the following persons:

(a) Each refiner shall submit Montana refinery processing data by fuel type in custody including:

(i) inventory stocks at the beginning and end of the month;

(ii) receipts during the month;

(iii) inputs during the month;

(iv) production during the month;

(v) shipments, losses, and refinery fuel use during the month.

(b) Each prime petroleum supplier shall submit:

(i) 3-month projections of his Montana supply and stock of petroleum products that the supplier anticipates supplying to Montana customers; and

(ii) the actual volume of petroleum products delivered in the state the previous month.

(c) Each petroleum pipeline company shall submit reports by fuel type of Montana pipeline terminal delivery, throughput, and export.

(d) Each bulk pipeline terminal operator shall submit end-of-month reports of inventory stock levels of finished petroleum products in custody in Montana by type of product and storage location.

(e) Each prime petroleum supplier shall submit quarterly reports of monthly marketing sales in Montana by standard point locater index, or other method prescribed by the governor, and fuel type of petroleum products designated by the governor.

(3) In obtaining information under subsections (1) and (2) during a state of energy emergency, the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(4) In obtaining information under this section, the governor shall:

(a) avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for the governor's study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(5) Except as provided in subsection (2), this part does not require the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(6) (a) The information required under subsection (2) is subject to the following restrictions:

(i) Except in accordance with a proper judicial order, a public officer or employee charged by the governor with the custody of this information may not divulge or make known in any manner any information that is specific to a particular distributor.

(ii) The public officers and employees charged by the governor with the custody of the information provided for in subsection (2) may not be required to produce any of it or evidence of anything contained in it on behalf of any party to any action or proceeding under this part, except when the information concerned is directly involved in the action or proceeding, in which case only that information directly pertinent to the action or proceeding may be admitted.

(b) This section does not preclude access to the information by the legislative auditor in carrying out the functions under Title 5, chapter 13.

History: En. Sec. 5, Ch. 473, L. 1979; amd. Sec. 3, Ch. 204, L. 1981; amd. Sec. 75, Ch. 545, L. 1995.

Cross-References

General authority of Governor — emergencies, 10-3-104.

90-4-306. Advice of distributors and consumers. The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 5-15-101, and of distributors throughout the information gathering, planning, and implementation process described in this part.

History: En. Sec. 6, Ch. 473, L. 1979.

Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; 5-15-201.

Legislative Consumer Committee, Title 5, ch. 15, part 1.

Communications — emergencies, 10-3-106.

90-4-307. Submission and approval of curtailment plans. (1) The governor may at any time require a distributor of an energy resource to prepare for the governor's approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans must be submitted in the form and within limits that the governor shall specify and must recognize the obligations and duties that may be placed upon distributors subject to this part by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment must be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities; and

(e) the regional agreements or contracts of the distributors.

History: En. Sec. 7, Ch. 473, L. 1979; amd. Sec. 76, Ch. 545, L. 1995.

Cross-References

General authority of Governor — emergencies, 10-3-104.

90-4-308. Governor's considerations. In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of the declaration and the implementation of any curtailment or conservation plans;

and

(5) any other relevant factors.

History: En. Sec. 8, Ch. 473, L. 1979; amd. Sec. 77, Ch. 545, L. 1995.

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

90-4-309. Energy supply alert. (1) The governor may upon finding that an energy alert condition exists, declare the same for a period of not longer than 90 days, setting forth the reasons therefor. Such declaration may be renewed for 90-day periods thereafter upon a finding that the energy alert condition will continue for such further period.

(2) Whenever the governor has declared an energy supply alert, he may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste and salvage of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions.

History: En. Sec. 9, Ch. 473, L. 1979.

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

90-4-310. Energy emergency powers of governor. In addition to existing powers and duties, the governor has the following duties and special energy emergency powers, subject to the definitions and limitations in this part:

(1) The governor may, upon finding that a situation exists that threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers enumerated in this section become effective.

(2) The condition of energy emergency terminates after 45 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may:

(a) implement programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy. However, in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency.

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) This part does not mean that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required under this part or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, this part does not exempt a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor.

History: **En. Sec. 10, Ch. 473, L. 1979; amd. Sec. 1, Ch. 387, L. 1981; amd. Sec. 78, Ch. 545, L. 1995.**

Cross-References

General authority of Governor — emergencies, 10-3-104.

Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-311. Obligations of state and local executives. To protect the public welfare during conditions of energy alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in its jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

History: **En. Sec. 11, Ch. 473, L. 1979.**

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

Intergovernmental cooperation in emergencies, Title 10, ch. 3, part 2.

Local and interjurisdictional planning and execution — emergencies, 10-3-401.

90-4-312. Coordination with federal provisions. In order to attain uniformity, as far as is practicable throughout the country in measures taken to aid in energy crisis management, all action taken under this part and all orders and rules made pursuant to it shall be taken or made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

History: En. Sec. 12, Ch. 473, L. 1979.

Cross-References

State planning and execution — emergencies, Title 10, ch. 3, part 3.

90-4-313. Compliance. Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor to comply with an order issued or action taken pursuant to this part shall comply.

History: En. Sec. 13, Ch. 473, L. 1979; amd. Sec. 79, Ch. 545, L. 1995.

Cross-References

Disaster and emergency services — general authority of Governor, 10-3-104.

Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-314. Orders to distributors. The governor may order any distributor to take such action on his behalf as may be required to implement orders issued pursuant to 90-4-310 and no distributor or person is liable for actions taken in accordance with such order.

History: En. Sec. 14, Ch. 473, L. 1979.

Cross-References

Disaster and emergency services — general authority of Governor, 10-3-104.

Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-315. Liability. No distributor or person is liable for damages to persons or property resulting from action taken in accordance with orders or rules issued pursuant to this part or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

History: En. Sec. 15, Ch. 473, L. 1979.

90-4-316. Rules and executive orders. Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 2, chapter 4, MCA, the governor may adopt rules necessary to implement this part and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of this part shall be published in the Montana Administrative Register upon request of the governor.

History: En. Sec. 16, Ch. 473, L. 1979.

Cross-References

Disaster and emergency services — general authority of Governor, 10-3-104.

Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-317. Disaster and emergency laws supplemented. The powers vested in the governor under this part are in addition to and not in lieu of emergency powers vested in him under Title 10, chapter 3, or any other law of Montana.

History: **En. Sec. 17, Ch. 473, L. 1979.**

90-4-318. Governor may authorize expenditure. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an energy emergency is declared by the governor and justifies the expenditure as set forth in 10-3-311 for other emergency or disaster expenditures.

History: **En. Sec. 18, Ch. 473, L. 1979.**

90-4-319. Penalties. A person convicted of violating this part is guilty of a misdemeanor. Each day of violation, after notice of violation, constitutes a separate offense.

History: **En. Sec. 19, Ch. 473, L. 1979.**

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor penalty when none specified, 46-18-212.

Part 4

Pacific Northwest Electric Power and Conservation Planning Council

90-4-401. Agreement to pacific northwest electric power and conservation planning council. The state of Montana agrees through this part and through the appointment of persons as provided in this part to formation of and participation in the pacific northwest electric power and conservation planning council, hereafter referred to in this part as "the council", and to the performance of the functions and duties of the council as provided in the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501).

History: **En. Sec. 1, Ch. 50, L. 1981.**

90-4-402. Appointment of council members by governor. (1) The governor shall appoint at the beginning of each gubernatorial term two persons to serve as members of the council as provided in Public Law 96-501.

(2) An appointment of a council member by the governor is subject to the confirmation of the senate, except that the governor may appoint a council member to assume office before the senate meets in its next regular session to consider the appointment. A member so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall make a new appointment.

(3) A council member serves at the pleasure of the governor. The governor may remove a council member at any time and appoint a new member to the office.

(4) If a vacancy occurs in the office of a council member, the governor shall appoint, as soon as reasonably possible, a new member to serve at the pleasure of the governor.

(5) The governor shall appoint the initial members within 30 days of March 12, 1981.

History: En. Sec. 2, Ch. 50, L. 1981.

Cross-References

Powers and duties of Governor, 2-15-201.

90-4-403. Duties of council members. The council members shall:

(1) undertake the functions and duties prescribed by Public Law 96-501 and in applicable state law; and

(2) serve on a full- or part-time basis as determined by the governor.

History: En. Sec. 3, Ch. 50, L. 1981; amd. Sec. 1, Ch. 98, L. 1985.

90-4-404. Compensation of council members. Each member shall receive compensation to be determined by the governor, in consultation with the governors of the participating states, and according to applicable federal law.

History: En. Sec. 4, Ch. 50, L. 1981.

90-4-405. Council members to hold public hearings in areas affected by acquisition of major resources. (1) Whenever the northwest conservation and electric power plan or any amendment to the plan calls for the acquisition of major resources, as defined in 16 U.S.C. 839a, from an area of Montana east of the continental divide, the Montana council members shall hold at least one public hearing in the geographic area from which the major resources are proposed to be acquired and that will be affected by the proposed acquisition.

(2) The Montana council members shall request the participation of the other members of the council in conducting the public hearing required under subsection (1).

(3) The Montana council members shall give notice in a newspaper of general circulation in the area affected by the proposed acquisition of major resources at least 2 weeks before the public hearing required by subsection (1). The public hearing must be held at least 30 days before any final decision is made to incorporate into the plan the acquisition of major resources from the affected area.

History: En. Sec. 1, Ch. 335, L. 1991.

Part 5

Residential Conservation Service (Repealed. Sec. 1, Ch. 184, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

90-4-501. En. Sec. 1, Ch. 137, L. 1981.
90-4-502. En. Sec. 2, Ch. 137, L. 1981.
90-4-503. En. Sec. 3, Ch. 137, L. 1981.
90-4-504. En. Sec. 4, Ch. 137, L. 1981.

Part 6

State Building Energy Conservation Program

90-4-601. Short title. This part may be cited as the "State Building Energy Conservation Act".

History: En. Sec. 1, Ch. 473, L. 1989.

90-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system.

History: En. Sec. 2, Ch. 473, L. 1989; amd. Sec. 493, Ch. 418, L. 1995.

90-4-603 and 90-4-604 reserved.

90-4-605. Preparation of energy conservation program. (1) Before June 30 of each odd-numbered year, the department shall inform, in writing, each state agency of the energy conservation program and request agencies interested in participating in the program to contact the department. The department shall work with these agencies to identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for in-depth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) During the energy analyses, the department shall consult with the utilities that serve the selected facilities to discuss potential impacts on the utilities and their customers of making energy conservation improvements to these facilities.

(4) Upon completion of the energy analyses, the department shall submit to the governor its findings and a list of projects recommended for funding under the energy conservation program. The department shall identify estimated costs and savings to the state based on these analyses.

(5) The department shall compile a report that must include the following:

(a) a listing of contacts between the department and other state agencies;

(b) a summary of the department's review of agency requests and a selection of projects for in-depth analysis;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project;

(d) a description of measures taken by the department to address the issues that were raised in the consultation with the affected utilities; and

(e) if a fuel switching measure is proposed, an analysis of the costs to the affected utility and its customers and of the benefits to the state.

(6) If a fuel switching measure is proposed, the department shall demonstrate through the analysis required by subsection (5)(e) that the benefits to the state exceed the costs to the utility and its customers.

(7) The department shall submit the report required by subsection (5) to the governor before September 1 of each even-numbered year.

History: En. Sec. 3, Ch. 473, L. 1989; amd. Sec. 5, Ch. 61, L. 1995.

90-4-606. Program report and recommendations. The governor shall submit the proposed projects to be funded by the energy conservation program for the next biennium as a part of the budget required by 17-7-123. The governor shall make available, as provided by 17-7-124:

(1) the report prepared by the department;

(2) a description of the improvements to be financed;

(3) the estimated cost of each project and the total cost of the program; and

(4) the proposed method of financing the improvement. If energy conservation program bonds are proposed to be issued to finance the program improvements, the governor shall include within the report a written statement by the department that the estimated annual energy savings to be derived from the installation of the energy saving equipment or improvements, upon completion, are expected to equal or exceed the annual debt service to be paid on the energy conservation program bonds proposed to be issued to fund the costs of such equipment or improvements.

History: En. Sec. 4, Ch. 473, L. 1989; amd. Sec. 53, Ch. 349, L. 1993.

90-4-607. Duties of department. In addition to the duties set forth in 90-4-605, the department is authorized to:

(1) analyze state utility data to identify high-potential energy conservation projects;

(2) perform comprehensive energy analyses on state-owned buildings, structures, and facilities, contracting with private engineers when necessary;

(3) transfer funds and authority to the department of administration to procure design and construction of cost-effective energy improvements;

(4) train facility maintenance staff in energy saving techniques and maintenance of energy improvements and monitor energy conservation projects to ensure that cost savings are realized and are adequate to cover the debt service if bonds have been issued to fund the improvements.

History: En. Sec. 5, Ch. 473, L. 1989; amd. Sec. 5, Ch. 350, L. 1993.

90-4-608 through 90-4-610 reserved.

90-4-611. Authority to issue energy conservation program bonds. (1) When authorized by the vote of two-thirds of the members of each house of the legislature, at the request of the department, and pursuant to this part, the board may issue and sell bonds or bond anticipation notes of the state in a manner it considers necessary and proper to finance the energy conservation program and to pay costs associated with the sale and issuance of the bonds. Bonds may be issued to provide funds for the payment or redemption of energy conservation building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable on the bonds according to their terms.

History: **En. Sec. 6, Ch. 473, L. 1989.**

90-4-612. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of energy conservation program bonds may be issued by the board at the request of the department, in denominations and forms, whether payable to bearer or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at a rate or rates, maturing at times not exceeding 15 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of such fiscal agent of the state, as the board shall determine subject to the provisions of this section and 90-4-611.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The bonds and any interest coupons must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board may employ a fiscal agent to assist in the performance of its duties under this part.

(4) There is created an energy conservation program account within the state special revenue fund established in 17-2-102.

(5) All proceeds of bonds and notes issued under 90-4-611 must be deposited in the energy conservation program account, except that any premiums and accrued interest received must be deposited in the debt service fund established in 17-2-102.

History: **En. Sec. 7, Ch. 473, L. 1989.**

90-4-613. Use of energy conservation program account. The energy conservation program account must be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the energy conservation program. The department may transfer all money authorized by the legislature for its administrative expenditures from the energy conservation program account to a special revenue fund.

History: **En. Sec. 8, Ch. 473, L. 1989; amd. Sec. 5, Ch. 571, L. 1991.**

90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency participating in the state energy conservation program:

(a) an estimate of the energy cost savings expected for that agency in each year of the biennium; and

(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act the following:

(a) authority for each participating state agency to transfer funds in an amount equal to the agency's projected debt service to the energy conservation program account established in 90-4-612; and

(b) authority for each participating state agency to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency.

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts appropriated in subsections (2)(a) and (2)(b).

(4) Each participating state agency shall transfer upon request of the department the amounts appropriated in accordance with subsection (2).

History: En. Sec. 6, Ch. 350, L. 1993.

Parts 7 and 8 reserved

Part 9

Clean Coal Technology Program (Repealed. Sec. 2, Ch. 33, Sp. L. November 1993)

Part Compiler's Comments

Histories of Repealed Sections:

90-4-901.	En. Sec. 4, Ch. 722, L. 1991.
90-4-902.	En. Sec. 5, Ch. 722, L. 1991.
90-4-903.	En. Sec. 6, Ch. 722, L. 1991.
90-4-904.	En. Sec. 7, Ch. 722, L. 1991.
90-4-905.	En. Sec. 8, Ch. 722, L. 1991.
90-4-906.	En. Sec. 9, Ch. 722, L. 1991.

Part 10

State Energy Policy — Goal and Development Process

90-4-1001. State energy policy goal statement. (1) It is the policy of the state of Montana to promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens.

(2) In pursuing this goal, it is the policy of the state of Montana to:

(a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) maintain a continual process to review this energy policy statement and any future changes so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy; and

(c) adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011.

History: En. Sec. 1, Ch. 242, L. 1993; amd. Sec. 1, Ch. 311, L. 1995.

90-4-1002. Definitions. As used in 90-4-1003, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of environmental quality established in 2-15-3501.

History: En. Sec. 2, Ch. 242, L. 1993; amd. Sec. 494, Ch. 418, L. 1995; amd. Sec. 310, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in introduction, after "90-4-1003", deleted "and 90-4-1004". Amendment effective March 12, 1997.

90-4-1003. Energy policy development process. (1) The department and the council, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.

(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the council specific components of a state energy policy for development under the consensus process described in subsection (3).

(3) (a) Upon selection of a specific energy policy component, the council shall assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.

(b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.

(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the council. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group's recommendations, the council shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;

(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;

(iii) prepare reports for and make recommendations to the council; and

(iv) consult regularly with the council to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the council may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities.

History: En. Sec. 3, Ch. 242, L. 1993.

90-4-1004. Terminated. Sec. 5, Ch. 242, L. 1993.

History: En. Sec. 4, Ch. 242, L. 1993.

90-4-1005 through 90-4-1009 reserved.

90-4-1010. Transportation energy policy. It is the transportation energy policy of the state of Montana to promote actions that encourage the conservation of energy through the environmentally responsible management and planning of efficient transportation systems. This policy further recognizes that energy conservation must be balanced with the state's interest in establishing, preserving, and maintaining a safe, efficient transportation system that equitably meets the mobility needs of Montana's citizens and connects them to the nation's economy.

History: En. Sec. 2, Ch. 311, L. 1995.

90-4-1011. Alternative fuels policy — implementing guidelines. (1) The state of Montana encourages the use of alternative fuels and fuel blends to the extent that doing so produces environmental and economic benefits to the citizens of Montana.

(2) To implement the policy stated in subsection (1), the legislature recommends the following guidelines:

(a) All policies and programs should have in-state benefits.

(b) Policies and programs should be coordinated among the affected agencies.

(c) The state recognizes incentives as a temporary tool to implement the alternative fuels policy. Recipients of those incentives should develop a plan, including an educational component, to phase out the incentive. In determining incentives, the state should:

(i) consider incentives for the producer, retail, and consumer levels;

(ii) establish a logical link between revenue sources and incentives; and

(iii) encourage the use of self-sufficient markets.

(d) Any state alternative fuels program should have measurable benefits that are communicated to the public.

(e) State and local governments should be encouraged to set an example with their vehicle fleets in the use of alternative fuels and fuel blends.

(f) Consistent with the guidelines in subsections (2)(a) through (2)(e), the state encourages production of alternative fuels and fuel blends.

History: En. Sec. 3, Ch. 311, L. 1995.

Cross-References

State vehicles to use gasohol, 2-17-414.

Gasohol production equipment — classification for tax purposes, 15-6-135.

Gasohol tax per gallon, 15-70-204.

Refund of tax for certain uses of gasohol, 15-70-221.

Tax incentive for production of alcohol to be used as gasohol, Title 15, ch. 70, part 5.

CHAPTER 5

SECONDARY INDUSTRY AND COMMERCIAL DEVELOPMENT

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Chapter Cross-References

County culture, social services, and recreation, Title 7, ch. 16.

Business incubator tax exemption, Title 15, ch. 24, part 18.

Coal tax to alternative energy research and renewable resource development, 15-35-108.

State construction contracts, Title 18, ch. 2.

Writs — mandamus, Title 27, ch. 26, part 2.

Negotiable instruments, Title 30, ch. 3.

Pledges, 30-9-102, 71-2-101.

Forest development road, 61-8-110.

Eminent domain, Title 70, ch. 30.

Mortgages, Title 71, ch. 1.

Montana Major Facility Siting Act, Title 75, ch. 20.

Department of Natural Resources and Conservation — duties of development, protection, and conservation of forest, range, and water resources, 76-13-104.

Development of state land resources, Title 77, ch. 1, part 6.

Oil and gas development, Title 77, ch. 3, part 4.

Development of geothermal and hydroelectric resources on state lands, Title 77, ch. 4.

Water resource development, Title 85, ch. 1.

Part 1
Industrial Development Projects

Part Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.

Business improvement districts, Title 7, ch. 12, part 11.

Agricultural experiment station and research centers, 20-25-222.

Experimental farms, 20-25-225.

Development of outdoor recreational resources, Title 23, ch. 2, part 1.

Montana development corporation, 32-4-102.

Agricultural cooperatives, Title 35, ch. 16.

Cooperative marketing, Title 35, ch. 17.

Federal and state aid for airport development, 67-10-405.

Airport development — municipal and regional airport authorities, Title 67, ch. 11.

90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(5) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(6) "Mortgage" means a mortgage or deed of trust or other security device.

(7) "Municipality" means any incorporated city or town in the state.

(8) "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, which must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects.

History: En. Sec. 1, Ch. 51, L. 1965; amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch. 386, L. 1971; amd. Sec. 1, Ch. 234, L. 1975; amd. Sec. 1, Ch. 374, L. 1975; R.C.M. 1947, 11-4101; amd. Sec. 1, Ch. 656, L. 1979; amd. Sec. 1, Ch. 318, L. 1981; amd. Sec. 1, Ch. 376, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. March 1986; amd. Sec. 1, Ch. 254, L. 1993; amd. Sec. 21, Ch. 255, L. 1995.

Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.

Rate of interest on bonds to be determined by governing bodies, 17-5-102.

Development of outdoor recreational resources, Title 23, ch. 2, part 1.

Montana development corporation, 32-4-102.

Agricultural cooperatives, Title 35, ch. 16.

Cooperative marketing, Title 35, ch. 17.

Montana Major Facility Siting Act, Title 75, ch. 20.

Development of state land resources, Title 77, ch. 1, part 6.

Oil and gas development, Title 77, ch. 3, part 4.

Development of geothermal and hydroelectric resources on state lands, Title 77, ch. 4.

Water resource development, Title 85, ch. 1.

90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county may:

(a) acquire, by construction, purchase, devise, gift, or lease or any combination of such methods, one or more projects located within this state. The projects may be located within, without, or partially within and partially without the municipality or county.

(b) lease to others any or all of its projects for such rentals and upon such terms and conditions, consistent with the provisions of this part, as the governing body considers advisable;

(c) enter into agreements, upon terms the governing body considers advisable and not in conflict with the provisions of this part, to loan the proceeds of its revenue bonds to others for the purpose of defraying the cost of acquiring or improving any project;

(d) issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and secure the payment of such bonds as provided in this part. The revenue bonds may be issued in two or more series or issues where considered advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of the bonds, priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are considered necessary and are not in conflict with the provisions of this part; and

(e) sell and convey any real or personal property acquired as provided by subsection (1)(a) of this section and make any order respecting it as may be conducive to the best interest of the municipality or county, provided that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) No municipality or county may operate any project financed by the sale of revenue bonds as a business or in any manner except as the lessor thereof. No municipality or county may acquire any such project or any part thereof by condemnation.

History: En. Sec. 2, Ch. 51, L. 1965; R.C.M. 1947, 11-4102; amd. Sec. 3, Ch. 51, L. 1979; amd. Sec. 2, Ch. 656, L. 1979.

Cross-References

Local government — debt management, Title 7, ch. 7.

Functions of Department of Commerce — economic development, 90-1-105.

Powers cumulative, 90-5-111.

Advice and information by Department of Commerce, 90-5-113.

90-5-103. Limited obligation bonds — form and contents — sale — negotiability — filing. (1) All bonds issued by a municipality or county under the authority of this part must be limited obligations of the municipality or county. Bonds and interest coupons issued under the authority of this part may not constitute or give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. This limitation must be plainly stated upon the face of each of the bonds.

(2) The bonds referred to in subsection (1) may be executed and delivered at any time and from time to time, be in form and denominations, be of tenor, be in registered or bearer form either as to principal or interest, or both, be payable in installments and at a time or times not exceeding 40 years from the bonds date, be payable at a place or places, bear interest at a rate or rates, be evidenced in a manner, be redeemable prior to maturity, with or without premium, and contain provisions not inconsistent with this part as considered in the best interest of the municipality or county and provided for in the proceedings of the governing body under whose authority the bonds must be authorized to be issued.

(3) Any bonds issued under the authority of this part may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be agreed upon by the lessee of the project or the borrower of the funds. The municipality or county may pay all expenses, premiums, and commissions that the governing body may consider necessary or advantageous in connection with the authorization, sale, and issuance of the bonds from the proceeds of the sale of the bonds or from the revenue of the projects.

(4) All bonds issued under the authority of this part and all interest coupons applicable to the bonds must be construed to be negotiable instruments despite the fact that they are payable solely from a specified source.

(5) All bonds issued under the authority of this part must be filed with the securities commissioner within 10 days of the date of their issue. The filing must include the name of the issuing authority, the name and address of the person or entity on whose behalf the bonds are issued, the amount of the bond issue, the date of the bond issue, and any other information that the securities commissioner may request. Failure to comply with this section does not affect the validity of the bond issue.

History: (1) thru (4)En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974; R.C.M. 1947, 11-4103(1) thru (4); amd. Sec. 3, Ch. 656, L. 1979; (5)En. Sec. 1, Ch. 167, L. 1981; amd. Sec. 50, Ch. 423, L. 1995.

Cross-References

Local government — debt management, Title 7, ch. 7.

Negotiable instruments, Title 30, ch. 3.

Use of proceeds of bond sales, 90-5-108.

90-5-104. Hearing. (1) Prior to the issuance of any bonds under the authority of this part by any municipality or county to pay the costs of acquiring or improving a project, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for 3 consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing, the general nature of the project, the name of the lessee, borrower, or user of the project, and the estimated cost of the project. The governing body may not issue the bonds to pay the costs of acquiring or improving a project unless it appears after the public hearing that the acquisition or improvement of the project is in the public interest of the municipality or county.

(2) The provisions of subsection (1) do not apply to refunding bonds issued under 90-5-107 to refund bonds issued to pay the costs of acquiring or improving a project as to which a hearing was held under subsection (1).

History: En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974; R.C.M. 1947, 11-4103(5); amd. Sec. 4, Ch. 656, L. 1979; amd. Sec. 2, Ch. 376, L. 1981.

Cross-References

Notice — actual and constructive, 1-1-217.

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

General municipal and county powers, 90-5-102.

90-5-105. Provisions for security of bondholders. (1) The payment of the principal of and interest on any bonds issued under the authority of this part shall be secured by a pledge of the revenues out of which such bonds shall be made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the project;

(b) a pledge of the lease or loan agreement relating to such project; or

(c) such other security device as may be deemed most advantageous by the issuing authority.

(3) (a) The proceedings under which the bonds are authorized to be issued under the provisions of this part and any mortgage given to secure the same, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this part, including, without limiting the generality of the foregoing, provisions respecting the:

(i) fixing and collection of rents or payments under any lease or loan agreement concerning the project covered by such proceedings or mortgage;

(ii) terms to be incorporated in the lease or loan agreement;

(iii) maintenance and insurance of such project;

(iv) creation and maintenance of special funds from the revenues of such project; and

(v) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(b) In making any such agreements or provisions, a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(4) The proceedings authorizing any bonds under the provisions of this part and any mortgage, including a mortgage given by the lessee or borrower, securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(5) Any mortgage made by the municipality or county or by the lessee or borrower to secure these bonds may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965; R.C.M. 1947, 11-4104; amd. Sec. 5, Ch. 656, L. 1979.

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

Writs — mandamus, Title 27, ch. 26.

Negotiable instruments, Title 30, ch. 3.

Pledges, 30-9-102, 71-2-101.
Mortgages, Title 71, ch. 1.
Cost of projects, 90-5-109.

90-5-106. Determination of costs — terms of lease. (1) Prior to the leasing of any project or entering into a loan agreement concerning a project, the governing body must determine and find the following:

(a) the amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project;

(b) the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and

(c) the estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms of the lease or loan agreement provide that the lessee or borrower shall maintain the project and carry all proper insurance with respect thereto.

(2) The determinations and findings of the governing body required to be made by subsection (1) shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of any bonds authorized by this part, the municipality or county shall lease the project to a lessee or lessees or enter into a loan agreement with a borrower under a lease or loan agreement conditioned upon completion of the project by the lessees or borrowers and providing for payment to the municipality or county of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to:

(a) pay the principal of and interest on the bonds issued to finance the project;

(b) pay the taxes on the project;

(c) build up and maintain any reserves deemed by the governing body to be advisable in connection therewith; and

(d) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the lease or loan agreement obligates the lessees or borrowers to pay for the maintenance and insurance of the project.

(3) Subject to the limitations of this part, the lease, loan agreement, or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties and, notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, an option may be granted to a lessee to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: En. Sec. 5, Ch. 51, L. 1965; R.C.M. 1947, 11-4105; amd. Sec. 6, Ch. 656, L. 1979.

Cross-References

Cost of projects, 90-5-109.

90-5-107. Refunding of bonds. (1) Any bonds issued under the provisions of this part and at any time outstanding, including, without limitation, short-term bonds issued in anticipation of the issuance of long-term bonds, may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any interest thereon and any premiums and commissions necessary to be paid in connection therewith. An issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of 90-5-106(1).

(2) Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby. The holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this part shall be subject to the provisions contained in 90-5-103 and may be secured in accordance with the provisions of 90-5-105.

(3) The principal proceeds from the sale of any refunding bonds may be applied only as follows, either:

(a) to the immediate payment and retirement of the bonds being refunded; or

(b) to the extent not required for the immediate payment of the bonds being refunded, such proceeds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded and to pay any expenses incurred in connection with such refunding, except that provision may be made for the pledging and disposition of any surplus, including, without limitation, to the payment of the principal of and interest on any issue or series of refunding bonds.

(4) Money in a trust fund under subsection (3) may be invested in direct obligations of the United States government, obligations the principal of and interest on which are guaranteed by the United States government, or obligations of any agency or instrumentality of the United States government.

(5) Nothing in this section may be construed as a limitation on the duration of any deposit in trust for the retirement of bonds being refunded but that have not matured and that are not presently redeemable or, if presently redeemable, have not been called for redemption.

History: En. Sec. 6, Ch. 51, L. 1965; R.C.M. 1947, 11-4106; amd. Sec. 3, Ch. 376, L. 1981.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

90-5-108. Use of proceeds of bond sales. (1) The proceeds from the sale of any bonds issued under authority of this part shall be applied only for the purpose for which the bonds were issued or to discharge any existing indebtedness secured by a lien against a hospital or long-term care facility or higher education facility leased or owned by a nonprofit corporation. However, if the project is not a hospital or long-term care facility or higher education facility leased or owned by a nonprofit corporation, the proceeds from the sale of bonds may not be used to discharge indebtedness without an improvement to the project.

(2) Any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds.

History: En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975; R.C.M. 1947, 11-4107(part); amd. Sec. 7, Ch. 656, L. 1979; amd. Sec. 2, Ch. 4, Sp. L. March 1986.

Cross-References

Limited obligation bonds — form and contents — sale — negotiability, 90-5-103.

90-5-109. Cost of projects. The cost of acquiring or improving any project shall be deemed to include the following:

(1) the actual cost of acquiring or improving real estate for any project;

(2) the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees;

(3) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(4) bond reserves and premiums for insurance of lease rentals pledged to pay the bonds; and

(5) the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding 6 months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975; R.C.M. 1947, 11-4107(part).

Cross-References

Determination of costs — terms of lease, 90-5-106.

90-5-110. Taxation of projects. (1) Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year, but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year.

(2) Where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965; R.C.M. 1947, 11-4108; amd. Sec. 10, Ch. 239, L. 1983.

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Taxation — collection of property taxes, Title 15, ch. 16.

90-5-111. Powers cumulative. Neither this part nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965; R.C.M. 1947, 11-4109.

Cross-References

Local governments — general provisions, Title 7, ch. 1.

General municipal and county powers, 90-5-102.

90-5-112. Economic development levy. (1) The governing body of a city, county, or town is authorized to levy up to 1 mill upon the taxable value of all the property in the city, county, or town subject to taxation for the purpose of economic development. The governing body may:

(a) submit the question of the mill levy to the qualified voters voting in a city, county, or town election; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

(4) A tax authorized by a vote of the electorate, as provided in subsection (1)(a), may be levied for a period not to exceed 6 years and is not subject to the provisions of Title 15, chapter 10, part 4.

History: En. 11-4111 by Sec. 1, Ch. 311, L. 1975; amd. Sec. 32, Ch. 566, L. 1977; R.C.M. 1947, 11-4111; amd. Sec. 2, Ch. 5, Sp. L. June 1989; amd. Sec. 1, Ch. 457, L. 1991; amd. Sec. 1, Ch. 386, L. 1993; amd. Sec. 1, Ch. 279, L. 1995.

Cross-References

Counties — additional mill levies, 7-6-2532, 7-6-2533.

Municipalities — additional mill levies, 7-6-4432, 7-6-4434.

Tax levies to be made in mills and tenths and hundredths of mills, 15-10-201.

90-5-113. Advice and information by department of commerce. The department of commerce shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: En. Sec. 10, Ch. 51, L. 1965; amd. Sec. 56, Ch. 348, L. 1974; amd. Sec. 21, Ch. 213, L. 1975; R.C.M. 1947, 11-4110; amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Department of Commerce, 2-15-1801.

General municipal and county powers, 90-5-102.

90-5-114. Preference of Montana labor. (1) Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(2) A contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

History: **En. Sec. 3, Ch. 653, L. 1985; amd. Sec. 8, Ch. 561, L. 1987; amd. Sec. 4, Ch. 464, L. 1993.**

Part 2

Western Interstate Nuclear Compact State Nuclear Policy

Part Cross-References

Nuclear regulation, Title 50, ch. 79.

90-5-201. Western interstate nuclear compact adopted — text. The Western Interstate Nuclear Compact is entered into and adopted as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

Article I. Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities, and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

Article II. The Board

(1) There is hereby created an agency of the party states to be known as the "western interstate nuclear board", hereinafter called the board. The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(2) The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are

present and unless a majority of the total number of votes on the board are cast in favor thereof.

(3) The board shall have a seal.

(4) The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(5) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel, or other merit system laws of any of the party states.

(6) The board may establish and maintain, independently or in conjunction with any one or more of the party states or their institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation.

(8) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (7) of this article, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the board.

(9) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(10) The board shall adopt bylaws and rules for the conduct of its business and shall have the power to amend and rescind these bylaws and rules. The board shall publish its bylaws and rules in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(11) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article III. Finances

(1) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(2) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(3) The board may meet any of its obligations in whole or in part with funds available to it under Article II, paragraph (8) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II, paragraph (8) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(4) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(5) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become a part of the annual report of the board.

(6) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board and duly designated representatives of governments contributing to the board's support.

Article IV. Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state, and federal government and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article V. Powers

The board shall have power to:

(1) encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields;

(2) ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies;

(3) encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, byproducts, and all other appropriate adaptations of scientific and technological advances and discoveries;

(4) collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology;

(5) encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy;

(6) conduct or cooperate in conducting programs of training for state and local personnel engaged in any aspects of:

(a) nuclear industry, medicine, or education, or the promotion or regulation thereof;

(b) applying nuclear scientific advances or discoveries and any industrial commercial or other processes resulting therefrom;

(c) the formulation or administration of measures designed to promote safety in any matter related to the development, use, or disposal of nuclear energy, materials, products, byproducts, installations, or wastes, or to safety in the production, use, and disposal of any other substances peculiarly related thereto;

(7) organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological, or industrial fields to which this compact relates;

(8) undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the west;

(9) study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields;

(10) recommend such changes in or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(11) consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, byproducts, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis;

(12) consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields;

(13) advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields;

(14) cooperate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest;

(15) act as licensee, contractor, or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact;

(16) prepare, publish, and distribute, with or without charge, such reports, bulletins, newsletters, or other materials as it deems appropriate;

(17) ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(18) prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact;

(19) undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

Article VI. Mutual Aid

(1) Whenever a party state or any state or local governmental authorities therein request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(2) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges, and immunities as comparable officers and employees of the state to which they are rendering aid.

(3) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.

(4) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid shall be assumed and borne by the requesting state.

(5) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid and for the cost of all materials, transportation, wages, salaries, and maintenance of officers, employees, and equipment incurred in connection with such requests; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(6) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article VII. Supplementary Agreements

(1) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes, its duration, and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project, and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(2) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(3) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(4) The provisions to this article shall apply to supplementary agreements and activities thereunder but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article VIII. Other Laws and Relations

Nothing in this compact shall be construed to:

(1) permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order, or ordinance of a party state or subdivision thereof now or hereafter made, enacted, or in force;

(2) limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency, or officer pursuant to and in conformity with any valid and operative act of congress or limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor;

(3) alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions;

(4) permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

Article IX. Eligible Parties, Entry into Force and Withdrawal

(1) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(2) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided that it shall not become initially effective until enacted into law by five states.

(3) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 2 years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(4) Guam and American Samoa or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

Article X. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: En. Sec. 1, Ch. 258, L. 1973; R.C.M. 1947, 82-4401.

Cross-References

Nuclear regulation, Title 50, ch. 79.

Montana Major Facility Siting Act — approval by popular vote of certificate for nuclear facility, 75-20-201.

90-5-202. Board member appointed by governor — compensation. The governor shall appoint the board member. He shall report directly to the governor. The member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member or his alternate may receive no compensation in addition to salary for his services as a member of the board but shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

History: En. Sec. 2, Ch. 258, L. 1973; amd. Sec. 21, Ch. 453, L. 1977; R.C.M. 1947, 82-4402.

Cross-References

Governor's power of appointment, Art. VI, sec. 8, Mont. Const.

Powers and duties of Governor, 2-15-201.

Appointments by Governor, Title 5, ch. 5, part 3.

90-5-203. Bylaws and amendments filed with secretary of state. Pursuant to Article II, paragraph (10), of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

History: En. Sec. 3, Ch. 258, L. 1973; R.C.M. 1947, 82-4403.

Cross-References

Public records management, Title 2, ch. 6, part 2.

90-5-204 through 90-5-210 reserved.

90-5-211. Declaration of policy. It is hereby declared that the people of Montana are opposed to:

(1) the placement of MX missiles in Montana; and

(2) any further testing, development, or deployment of nuclear weapons by any nation.

History: En. Sec. 1, I.M. No. 91, approved Nov. 2, 1982.

Part 3

Employee Ownership Opportunity Act

90-5-301. Short title. This part may be cited as the "Employee Ownership Opportunity Act".

History: En. Sec. 1, Ch. 671, L. 1989.

90-5-302. Employee ownership development policy. It is the policy of this state to encourage the formation of employee-owned enterprises in order to stabilize local economies, to anchor business activity by increasing and broadening community investments, to increase productivity, and to encourage new capital formation through employee ownership.

History: En. Sec. 2, Ch. 671, L. 1989.

90-5-303. Definitions. As used in this part, the following definitions apply:

(1) "Employee ownership group" means a group that may include a corporation, labor organization, or other groups of persons voluntarily affiliated for the purpose of actively engaging in an effort to establish an employee-owned enterprise.

(2) "Employee-owned enterprise" means a business corporation that:

(a) requires that at least a majority of its employees:

(i) are vested with stock in the enterprise and all of whose vested employees are entitled to vote; and

(ii) own a majority of the shares which must be voted so that the vote of a majority of the employees control the vote of a majority of shares;

(b) requires that voting rights on corporate matters for shares held in trust for the employees pass through to those employees at least to the extent required by the voting requirements of section 409(e) of the Internal Revenue Code of 1986, as amended;

(c) provides vested employees the right to vote on corporate matters, including merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale; and

(d) requires that at least a majority of the members of the board of directors is elected by the employees of the enterprise.

History: En. Sec. 3, Ch. 671, L. 1989.

90-5-304. Extension of business assistance services to employee-owned enterprises. A business assistance program operated by the state must include employee-owned enterprises within the scope of its business assistance activities. An employee-owned enterprise is eligible for assistance, service, or financing available through any business assistance program receiving state money.

History: En. Sec. 4, Ch. 671, L. 1989.

90-5-305. Department to offer employee ownership development services. The department of commerce shall:

(1) compile, organize, and make available to the public a library of resources on the subject of employee ownership and participatory management;

(2) research the role of employee ownership in successful state and local economic development programs of other states;

(3) provide public education on the beneficial aspects of employee-owned enterprises;

(4) conduct seminars, workshops, and conferences to increase awareness of the benefits found to be common to employee-owned enterprises. At least one seminar must be held annually for public officials dealing with economic development, business assistance, and business financing programs.

(5) provide technical assistance and counseling on the establishment and management of employee-owned enterprises.

History: En. Sec. 5, Ch. 671, L. 1989.

CHAPTER 6

COMMUNITY IMPACT — PLANNING AND ABATEMENT

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Chapter Cross-References

Metropolitan sanitary and/or storm sewer district, Title 7, ch. 13, part 1.

Bonds — revenue, 17-6-103, 17-6-211.

Negotiable instruments, Title 30, ch. 3.

Pledges, 30-9-102, 71-2-101.

Secured transactions — filing of financing statement, 30-9-402.

Small tract financing, Title 71, ch. 1, part 3.

Part 1
Financing of Housing

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Board of Housing, 2-15-1814.

County housing authorities, Title 7, ch. 15, part 21.

Urban renewal, Title 7, ch. 15, parts 42 and 43.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

Bond issues, Title 17, ch. 5.

Mortgages, Title 71, ch. 1.

90-6-101. Short title. This part shall be known and may be cited as the "Housing Act of 1975".

History: En. 35-501 by Sec. 1, Ch. 461, L. 1975; R.C.M. 1947, 35-501.

90-6-102. Legislative declaration. The legislature finds and declares that there is a shortage in Montana of decent, safe, and sanitary housing which is within the financial capabilities of lower income persons and families. In order to alleviate the high cost of housing for these persons, the legislature believes that it is essential that additional public moneys be made available through the issuance of revenue bonds to assist both private enterprise and governmental agencies in meeting critical housing needs.

History: En. 35-502 by Sec. 2, Ch. 461, L. 1975; R.C.M. 1947, 35-502.

Cross-References

Rate of interest on bonds to be determined by governing bodies — limitations and exceptions, 17-5-102.

90-6-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part, including those on which interest payments are taxable and those on which interest payments are tax exempt.

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality of the United States or a commitment by the United States or a governmental agency or instrumentalities of the United States to insure a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality of the United States.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more of the entities listed in this subsection.

(8) "Housing development" means single-family homes, multifamily projects, housing for the elderly projects, nursing home projects, personal-care

projects, and any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable in connection with a development, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities that the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited-profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) cost of other items, including tenant relocation, that the board determines to be reasonable and necessary for the housing development, less any net rents and other net revenue received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination of the entities listed in this subsection that are:

(a) approved by the board;

(b) qualified to either own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument that constitutes a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time that the mortgage is acquired that does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest-bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization must be used exclusively for housing development purposes and part of the net income or net earnings of the organization may not inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain from the organization or seeking to eliminate or minimize losses in any transactions with the organization, except that the limitations apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income or other financial resources who require assistance under this part, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income, assets, and other financial resources available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families because of age or physical disabilities.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board.

History: En. 35-503 by Sec. 3, Ch. 461, L. 1975; amd. Sec. 1, Ch. 163, L. 1977; R.C.M. 1947, 35-503; amd. Sec. 1, Ch. 357, L. 1979; amd. Sec. 11, Ch. 274, L. 1981; amd. Sec. 1, Ch. 90, L. 1983; amd. Sec. 1, Ch. 359, L. 1983; amd. Sec. 79, Ch. 472, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 472 in definition of persons and families of lower income, in (f), substituted "disabilities" for "handicaps"; and made minor changes in style.

Cross-References

Federal housing securities eligible as collateral, 32-1-435.

Building and loan associations authorized to make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

Building and loan associations authorized to make loans on mortgages authorized by National Housing Act, 32-2-501 through 32-2-503.

Mortgages, Title 71, ch. 1.

Reserve funds and appropriations, 90-6-119.

90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any

of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law must be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of the sale;

(15) consent, whenever it considers it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means.

History: En. 35-504 by Sec. 5, Ch. 461, L. 1975; R.C.M. 1947, 35-504; amd. Sec. 1, Ch. 249, L. 1983; amd. Sec. 29, Ch. 686, L. 1983; amd. Sec. 31, Ch. 701, L. 1983; amd. Sec. 15, Ch. 581, L. 1987; amd. Sec. 14, Ch. 589, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Adoption of rules, 90-6-106.

Financing programs of Board, 90-6-108.

90-6-105. Meetings and acts of the board. (1) All meetings of the board are open to the public.

(2) All official acts of the board shall be in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board shall be in accordance with the Montana Administrative Procedure Act.

History: En. 35-525 by Sec. 26, Ch. 461, L. 1975; R.C.M. 1947, 35-525.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

90-6-106. Adoption of rules. (1) The board shall adopt rules respecting the regulation of borrowers, the admission of occupants in housing developments, the construction of ancillary facilities, and requirements or restrictions necessary to implement this part.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of housing sponsors and eligible recipients;

(b) approval, standards, and regulation of lending institutions under this part;

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and security purchase programs;

(d) assessment and collection of fees and charges in connection with its technical, consultative, and project assistance activities;

(e) determination and regulation of mortgagor and lending institution and their use of funds under this part, sponsor and mortgagor equity definitions and limitations, and housing development costs;

(f) percentage of housing units or housing developments assisted under this part that are reserved for lower income persons and families and which allows for an economic mixture of residents.

History: En. 35-505 by Sec. 6, Ch. 461, L. 1975; R.C.M. 1947, 35-505(2), (3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

General powers of Board — rulemaking, 90-6-104(3).

90-6-107. Deposit and expenditure of funds. (1) There is a housing authority enterprise fund in the proprietary fund type as provided for in 17-2-102(1)(b). All funds from the proceeds of bonds issued under this part, fees, and other moneys received by the board, moneys appropriated by the legislature for the use of the board in carrying out this part, and moneys made available from any other source for the use of the board shall be deposited in the housing authority enterprise fund except where otherwise provided by law. All funds deposited in the housing authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part, are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection (1). The capital reserve account consists of the aggregate of moneys retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part shall be deposited in the housing authority enterprise fund. Funds expended by the board under this subsection shall be repaid by the board from the fees and charges collected under this part and from any other moneys available for such repayment in accordance with this part.

History: En. 35-523 by Sec. 24, Ch. 461, L. 1975; R.C.M. 1947, 35-523; amd. Sec. 2, Ch. 249, L. 1983; amd. Sec. 6, Ch. 11, Sp. L. July 1992.

Cross-References

Fund structure, 17-2-102.

90-6-108. Financing programs of the board. The board may:

(1) make loans to lending institutions under terms and conditions adopted by the board requiring the proceeds to be used by the lending institution for the making of mortgage loans for housing developments in the state for persons and families of lower income;

(2) invest in, purchase or make commitments to purchase, and take assignments from lending institutions of notes, mortgages, and other securities evidencing loans for the construction, rehabilitation, purchase, leasing, or refinancing of housing developments for persons and families of lower income in this state, under terms and conditions adopted by the board;

(3) make, undertake commitments to make, and participate in the making of mortgage loans, including federally insured mortgage loans, and make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the construction or rehabilitation of housing developments designed and planned for occupancy by persons and families of lower income in this state, under terms and conditions adopted by the board;

(4) make, undertake commitments to make, and participate in the making of loans to persons and families of lower income for housing development under terms and conditions adopted by the board, including without limitation persons and families of lower income who are eligible or potentially eligible for federally insured loans, federal mortgages, or other federal housing assistance, when the board determines that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(5) require that loans made to or securities issued by lending institutions shall be additionally secured as to payment of principal and interest by a pledge of and a lien upon collateral security in amounts and consisting of obligations and securities as the board determines necessary to assure prompt payment of loans and interest. Collateral may be required to be lodged with a bank or trust company designated by the board as custodian, or the board may enter into an agreement with the lending institution requiring it to identify and maintain

and service the collateral and the income therefrom solely in accordance with the agreement. A copy of each agreement and any revisions or supplements thereto shall be filed with the secretary of state, and no further filing or other action under the Uniform Commercial Code or any other law shall be required to perfect the security interest of the board in the collateral or in any additions or substitutions. The lien and trust is binding from the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the lending institution.

History: **En. 35-505 by Sec. 6, Ch. 461, L. 1975; R.C.M. 1947, 35-505(1), (4).**

Cross-References

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

When filing required to perfect security interest, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents, 30-9-304.

Liens, Title 71, ch. 3, part 1.

General powers of Board, 90-6-104.

90-6-109. Procedure prior to financing of housing developments. (1) The board may finance housing developments under this part only when the board finds that:

(a) there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served by the proposed housing development;

(b) private enterprise has not provided an adequate supply of decent, safe, and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford or provided sufficient mortgage financing for housing developments for occupancy by persons or families of lower income;

(c) the housing sponsor undertaking the proposed housing development in this state will supply well planned, well designed housing, and such sponsors are financially responsible;

(d) the housing development to be assisted under this part will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land use plans and regulations, areawide plans, and other public desires;

(e) the housing development does not involve the construction of second homes (for purposes of this paragraph, “second home” means a home which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property); and

(f) as to direct loans it is necessary to qualify for federal funds.

(2) The findings required under subsection (1) must be made after a public hearing whenever the financing of housing relates to a development for rental units owned by a for-profit housing sponsor. The board shall conduct the hearing unless it directs the governing body of the local government in which the proposed housing development is to be located to conduct the hearing.

History: **En. 35-506 by Sec. 7, Ch. 461, L. 1975; R.C.M. 1947, 35-506; amd. Sec. 2, Ch. 359, L. 1983.**

Cross-References

Secured transactions — filing of financing statement, 30-9-402.

90-6-110. Supervision of housing sponsors. (1) The board may supervise housing sponsors of housing developments financed under this part as follows:

(a) prescribe uniform systems of accounts and records for housing sponsors and require them to make reports and give answers to specific questions on forms and at times specified by the board;

(b) enter upon and inspect the housing development and examine all books and records of the housing sponsor with respect to capitalization, income, and other matters as specified by the board;

(c) supervise the operation and maintenance of any housing development and order repairs necessary to protect the public and the board's interest or the health, welfare, or safety of the occupants;

(d) determine standards for and control resident selection by a housing sponsor;

(e) require any housing sponsor to pay to the board fees as it prescribes in connection with the examination, inspection, supervision, auditing, or other regulation of the housing sponsor;

(f) order any housing sponsor to do or to refrain from doing things necessary to comply with the provisions of law, the rules of the board, and the terms of any contract or agreement to which the housing sponsor is a party;

(g) regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year 10% or a lesser amount of the original face amount of any investment or equity of any housing sponsor, as determined by the board; and

(h) adopt rules specifying the categories of cost which shall be allowable in the construction or rehabilitation of a housing development.

(2) The board shall require any housing sponsor to certify the actual housing development costs prior to periodic payments or upon completion of the housing development, subject to audit and determination by the board. The board may accept, in lieu of any certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, as will enable the board to determine with reasonable accuracy the amount of housing development costs.

History: En. 35-507 by Sec. 8, Ch. 461, L. 1975; R.C.M. 1947, 35-507.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State building code, Title 50, ch. 60, part 2.

90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether

the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date, and shall mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The board shall designate whether interest payments on the bonds are taxable or tax exempt. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

(5) The total amount of notes and bonds outstanding at any time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed $975 million. The issue price of bonds sold at a discount, not the face amount of the bonds, counts against this statutory ceiling.

History: En. 35-508 by Sec. 9, Ch. 461, L. 1975; R.C.M. 1947, 35-508; amd. Sec. 1, Ch. 518, L. 1979; amd. Sec. 1, Ch. 522, L. 1979; amd. Sec. 1, Ch. 53, L. 1981; amd. Sec. 1, Ch. 64, L. 1981; amd. Sec. 3, Ch. 359, L. 1983; amd. Sec. 1, Ch. 403, L. 1985.

Cross-References

Rate of interest on bonds to be determined by governing bodies — limitations and exceptions, 17-5-102.

Refunding bonds, Title 17, ch. 5, part 3.

Trust indenture, 90-6-116.

Signatures of prior Board members valid, 90-6-118.

90-6-112. Provision of bond resolutions. A resolution authorizing any notes or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from mortgages owned by the board and payment of principal of mortgages owned by the board;

(4) the setting aside of reserves of sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at such reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department of commerce and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee property, rights, powers, and duties in trust as the board determines;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this part; and

(11) any other matters of like or different character which in any way affect the security or protection of the holders of the notes or bonds.

History: En. 35-509 by Sec. 10, Ch. 461, L. 1975; R.C.M. 1947, 35-509; amd. Sec. 1, Ch. 143, L. 1979; amd. Sec. 11, Ch. 274, L. 1981.

Cross-References

Pledges, 30-9-102, 71-2-101.

Trust administration, Title 72, ch. 34.

90-6-113. Validity of pledge. Any pledge made by the board shall be valid and binding from the time the pledge is made. The revenues, moneys, or property pledged and thereafter received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. 35-510 by Sec. 11, Ch. 461, L. 1975; R.C.M. 1947, 35-510.

Cross-References

Pledges, 30-9-102, 71-2-101.

90-6-114. Personal liability. The board members and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: En. 35-511 by Sec. 12, Ch. 461, L. 1975; R.C.M. 1947, 35-511.

90-6-115. Purchase of notes and bonds — cancellation. The board, subject to existing agreements with noteholders or bondholders, may, out of any funds available for that reason, purchase notes or bonds of the board, which shall thereupon be cancelled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment thereon, if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: En. 35-512 by Sec. 13, Ch. 461, L. 1975; R.C.M. 1947, 35-512.

Cross-References

Redemption of bonds — optional method, 17-5-105.

90-6-116. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders which are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenditures of the board.

History: En. 35-513 by Sec. 14, Ch. 461, L. 1975; R.C.M. 1947, 35-513; amd. Sec. 4, Ch. 51, L. 1979.

Cross-References

Trust indentures — security for small tract financing, 71-1-303.

90-6-117. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. 35-514 by Sec. 15, Ch. 461, L. 1975; R.C.M. 1947, 35-514.

Cross-References

Negotiable instruments, Title 30, ch. 3.

90-6-118. Signatures of board members. In case any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

History: En. 35-515 by Sec. 16, Ch. 461, L. 1975; R.C.M. 1947, 35-515.

90-6-119. Reserve funds and appropriations. (1) The board shall pay into the capital reserve account:

(a) any funds appropriated and made available by the state for the purpose of the account;

(b) any proceeds of sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) any other funds which may be available to the board for the purpose of the account from any other source.

(2) All funds held in the capital reserve account shall be used solely for the payment of the principal of bonds secured in whole or in part by the account or of the debt service payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account shall not be withdrawn at any time in an amount which reduces the amount of the account to less than the sum of minimum capital reserve requirements established for the account, except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and debt service payments for the payment of which other moneys pledged are not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

(3) The board may not issue bonds secured in whole or in part by the capital reserve account unless the board deposits in the account from the proceeds of the bonds issued or from any other sources an amount not less than the minimum capital reserve requirement for these bonds. For the purposes of this section, the term “minimum capital reserve requirement” means, as of any particular date of computation, an amount of money, as provided in the resolution or indenture of the board authorizing the bonds or notes, equal to not more than the greatest of the respective amounts for the current or any future fiscal year of the board of annual debt service on the bonds of the board secured in whole or in part by the account. The annual debt service for any fiscal year is the amount of money equal to the aggregate of all interest and principal payable on the bonds during the fiscal year, calculated on the assumption that all the bonds are paid at maturity. If any amount of the bonds is required to be redeemed on an earlier date by the operation of a debt service fund, then that amount is considered payable on those bonds during the year they are to be redeemed for the purposes of this calculation.

(4) In computing the amount of the capital reserve account, securities in which all or a portion of the account shall be invested shall be valued at par or, if purchased at less than par, at their cost to the board.

History: En. 35-516 by Sec. 17, Ch. 461, L. 1975; R.C.M. 1947, 35-516; amd. Sec. 3, Ch. 249, L. 1983.

Cross-References

Fund structure, 17-2-102.

90-6-120. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall on or before September 1 in the year preceding the convening of the legislature deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, shall be repaid to the state's general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: En. 35-517 by Sec. 18, Ch. 461, L. 1975; R.C.M. 1947, 35-517.

Cross-References

Budgeting, Title 17, ch. 7.

Accounts of Board, 90-6-107.

90-6-121. Refunding obligations — issuance. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding which have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part which relate to the issuance of obligations.

History: En. 35-518 by Sec. 19, Ch. 461, L. 1975; R.C.M. 1947, 35-518.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

90-6-122. Refunding obligations — sale. Refunding obligations issued as provided in 90-6-121 may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. 35-519 by Sec. 20, Ch. 461, L. 1975; R.C.M. 1947, 35-519.

Cross-References

Refunding bonds — sale of bonds and debentures, 17-5-305.

Deposits and investments, Title 17, ch. 6.

90-6-123. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt or liability or obligation or a pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part shall contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. 35-520 by Sec. 21, Ch. 461, L. 1975; R.C.M. 1947, 35-520.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

90-6-124. Annual audit. (1) There shall be an audit of the board's books and records at least once each fiscal year.

(2) The legislative auditor may conduct an audit at the request of the legislative audit committee.

History: En. 35-521 by Sec. 22, Ch. 461, L. 1975; R.C.M. 1947, 35-521.

Cross-References

Legislative Auditor, Title 5, ch. 13, part 3.

90-6-125. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part or by local housing authorities under Title 7, chapter 15, parts 21, 44, and 45, their transfer, and their income (including any profits made on their sale) shall be free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. 35-522 by Sec. 23, Ch. 461, L. 1975; R.C.M. 1947, 35-522.

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Inheritance and estate taxes, Title 72, ch. 16.

90-6-126. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. 35-524 by Sec. 25, Ch. 461, L. 1975; R.C.M. 1947, 35-524; amd. Sec. 2, Ch. 143, L. 1979.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

90-6-127. Allocation of state limit. (1) All of the aggregate amount of qualified mortgage bonds that may be issued during any calendar year in accordance with section 146 of the Internal Revenue Code of 1954 (26 U.S.C. 146), as amended, is allocated to the board of housing.

(2) The board of housing may adopt standards for determining and may designate areas of chronic economic distress within the meaning of section 143(j)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 143(j)(3)), as amended.

History: En. Sec. 1, Ch. 54, L. 1981; amd. Sec. 311, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1) and (2) inserted parenthetical references to sections of the Internal Revenue Code; in (1) substituted "section 146" for "section 103A(g)"; and in (2) substituted "section 143(j)(3)" for "section 103A(g)". Amendment effective March 12, 1997.

Part 2

Coal Impacts — Evaluation and Abatement Funding

Part Cross-References

Coal severance tax, Art. IX, sec. 5, Mont. Const.; Title 15, ch. 35.

Montana Major Facility Siting Act, Title 75, ch. 20.

90-6-201. Purpose. The purposes of this part are to assist local governmental units that have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes or as a consequence of a major decline in coal mining or in the operation of coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways that serve the area affected by the large-scale development, to support county land planning, and to support public schools throughout the state.

History: En. 50-1701 by Sec. 1, Ch. 502, L. 1975; R.C.M. 1947, 50-1801; amd. Sec. 76, Ch. 509, L. 1995; amd. Sec. 1, Ch. 204, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 204 near middle, after "complexes", inserted "or as a consequence of a major decline in coal mining or in the operation of coal-using energy complexes". Amendment effective July 1, 1997.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Allocation of coal severance taxes, 15-35-108.

90-6-202. Account established. There is within the state special revenue fund a coal area highway improvement account.

History: En. 50-1702 by Sec. 2, Ch. 502, L. 1975; R.C.M. 1947, 50-1802; amd. Sec. 47, Ch. 281, L. 1983; amd. Sec. 5, Ch. 662, L. 1987; amd. Sec. 46, Ch. 11, Sp. L. June 1989; amd. Sec. 77, Ch. 509, L. 1995.

Cross-References

Fund structure, 17-2-102.

90-6-203. Definition of coal board. "Board" means the coal board provided for in 2-15-1821.

History: En. 90-6-203 by Code Commissioner, 1979; amd. Sec. 4, Ch. 274, L. 1981.

90-6-204. Chairman, meetings, compensation, and facilities. (1) The board shall elect a chairman from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the chairman or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of commerce will provide suitable office facilities and the necessary staff for the coal board.

History: En. 50-1705, 50-1708 by Secs. 6, 9, Ch. 502, L. 1975; R.C.M. 1947, 50-1805, 50-1808; amd. Sec. 6, Ch. 274, L. 1981.

90-6-205. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from available funds;

(4) award grants, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part); (6)En. Sec. 1, Ch. 250, L. 1983; amd. Sec. 1, Ch. 690, L. 1983; amd. Sec. 1, Ch. 619, L. 1985; amd. Sec. 2, Ch. 715, L. 1985; amd. Sec. 2, Ch. 733, L. 1985; amd. Sec. 2, Ch. 5, Sp. L. June 1986; amd. Sec. 2, Ch. 19, Sp. L. June 1986; amd. Sec. 6, Ch. 662, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 78, Ch. 509, L. 1995; amd. Sec. 2, Ch. 204, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 204 deleted former (4) that read: "(4) consider applications for loans from available funds for periods and interest rates to be determined by the board"; in (4), in introductory clause after "grants", deleted "and loans"; in (4)(a), after "development", inserted "or a major decline in coal mining or in the operation of coal-using energy complexes" and near end, after "consequence of", inserted "an increase or decrease in" and after "coal development" inserted "or in the consumption of coal by a coal-using energy complex"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of severance taxes, 15-35-108.

Fund structure, 17-2-102.

Indian affairs — legislative policy, 90-11-101.

90-6-206. Basis for awarding grants. (1) Grants must be awarded on the basis of:

(a) need;

(b) degree of severity of impact from an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

(2) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding the year of application for assistance.

(3) Millage rates for the present fiscal year that are lower than the average millage rate levied during the 3 years immediately preceding the year of application for assistance must be considered by the board to indicate the lack of local effort. The application under these circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local governmental unit to increase its bonded indebtedness to provide all or part of the governmental service or facility that is needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex.

(5) To the extent that funds are needed to evaluate and plan for the impact needs caused by the increase or decrease in coal development or in the consumption of coal by a coal-using energy complex, consideration of bond issues and millage levies may be waived.

(6) To the extent that the applicant has no history of mill levies, subsections (2) and (3) do not apply.

History: **En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part); amd. Sec. 1, Ch. 619, L. 1979; amd. Sec. 2, Ch. 690, L. 1983; amd. Sec. 3, Ch. 204, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 204 throughout section, in three places, inserted reference to increase or decrease in coal development and reference to consumption of coal by a coal-using energy complex; in (1), after "grants", deleted "and loans"; in (2) substituted "the year of application for assistance" for "coal development in that area or 1970, whichever is later, which impacts the local government units applying for assistance; in (3) substituted "the year of application for assistance" for "coal development in that area or 1970, whichever is later"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Counties — use of bond proceeds and borrowed money, 7-6-2327.

Authorization for county mill levy, 7-6-2501.

Municipalities — use of bond proceeds and borrowed money, 7-6-4237.

Authorization for tax levy and collection by municipality, 7-6-4421.

90-6-207. Priorities for impact grants. (1) The department of commerce shall biennially designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase or decrease in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of environmental quality for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase or decrease by at least 1 million tons a year and that the new, expanded, or reduced production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of environmental review for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) Except as provided in 90-6-205(4)(b), the board may not award more than 50% of the funds appropriated to it each year for grants to governmental units and state agencies for meeting the needs caused by an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

(6) All funds appropriated under this part are for use related to local impact.

(7) All designations based on an increase in coal development or in the consumption of coal by a coal-using energy complex made under subsection (1)(a), (1)(b), or (1)(c) must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated governmental unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants of not more than 50% of the funds appropriated to the board for grants in circumstances in which an impact exists in a community or area directly affected by:

(a) the operation of a coal mine or a coal-using energy complex; or

(b) the cessation or reduction of coal mining activity or of the operation of a coal-using energy complex.

History: En. 50-1707 by Sec. 8, Ch. 502, L. 1975; R.C.M. 1947, 50-1807; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 142, L. 1983; amd. Sec. 1, Ch. 462, L. 1985; amd. Sec. 2, Ch. 619, L. 1985; amd. Sec. 7, Ch. 662, L. 1987; amd. Sec. 1, Ch. 503, L. 1993; amd. Sec. 495, Ch. 418, L. 1995; amd. Sec. 79, Ch. 509, L. 1995; amd. Sec. 4, Ch. 204, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 204 in (1), in introductory clause, substituted "biennially" for "annually"; in (1)(a), near middle after "increased", inserted "or decrease"; in (1)(b)(ii), after "increase", inserted "or decrease" and after "expanded" inserted "or reduced"; deleted (3)(a) that read: "(a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1)"; in (3) substituted "90-6-205(4)(b)" for "90-6-205(5)(b)", after that citation deleted "beginning July 1, 1995, and thereafter", increased from 10% to 50% the maximum funds that Board may award to certain local governmental units, before "coal development" inserted "an increase or decrease", and after "coal development" inserted "or in the consumption of coal by a coal-using energy complex"; in (5), near end after "growth", inserted "or decline"; in (7), near beginning, inserted "based on an increase in coal development or in the consumption of coal by a coal-using energy complex", substituted "subsection (1)(a), (1)(b), or (1)(c)" for "this section", after "coal impact grants" deleted "and loans", substituted "50%" of Board funds for "20% and beginning July 1, 1995, not more than 10%", and after "board for grants" deleted "and loans"; in (7)(a) substituted "coal-using energy complex" for "mines"; substituted (7)(b) concerning cessation or reduction for "tax revenue is not available to mitigate the impact due to the closure of a mine or facility"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Department of Commerce, 2-15-1801.

Montana Major Facility Siting Act, Title 75, ch. 20.

The Montana Strip and Underground Mine Reclamation Act, Title 82, ch. 4, part 2.

Functions of Department of Commerce — state planning, 90-1-102.

90-6-208. Applications for grants. The governing body of a city, town, county, or school district, any other local or state governmental unit or agency, or the governing body of a federally recognized Indian tribe may apply for a grant to enable it to provide governmental services that are needed as a direct consequence of an increase or decrease of coal development or of an increase or decrease in the consumption of coal by a coal-using energy complex. The board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved.

History: En. 50-1709 by Sec. 10, Ch. 502, L. 1975; R.C.M. 1947, 50-1809(part); amd. Sec. 3, Ch. 690, L. 1983; amd. Sec. 5, Ch. 204, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 204 in first sentence, after "apply for a grant", deleted "or a loan", after "consequence of" inserted "an increase or decrease of", and after "coal development" inserted "or of an increase or decrease in the consumption of coal by a coal-using energy complex"; and made minor changes in style. Amendment effective July 1, 1997.

90-6-209. Limitations on grants. (1) The board may commit itself to the expenditure of funds for more than 1 year for a single project, but the board may not obligate funds not yet appropriated by the legislature. The total amount of grants to state agencies, except grants made pursuant to 90-6-205(4)(b), and Indian tribes may not exceed 7% of the total money allocated to the board during each fiscal year.

(2) A grant to an Indian tribe under 90-6-205 may not be approved by the board unless:

(a) the governing body of the tribe has agreed:

(i) to waive its immunity from suit on any issue specifically arising from the transaction of a grant obtained under this part; and

(ii) to the adjudication of any dispute arising out of the grant transaction in the district court of the first judicial district of the state of Montana; and

(b) approval of the transaction has been obtained from the secretary of the United States department of the interior whenever approval is necessary.

History: En. 50-1709 by Sec. 10, Ch. 502, L. 1975; R.C.M. 1947, 50-1809(part); amd. Sec. 4, Ch. 690, L. 1983; (2) En. Sec. 5, Ch. 690, L. 1983; (3) En. Sec. 6, Ch. 690, L. 1983; amd. Sec. 1, Ch. 420, L. 1985; amd. Sec. 3, Ch. 619, L. 1985; amd. Sec. 6, Ch. 204, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 204 in (1), in first sentence, substituted prohibition on obligation of unappropriated funds for "as long as the grant or loan does not extend over more than 10 years and does not exceed reasonable revenue expectations" and in second sentence, after "grants", deleted "and loans" and substituted "90-6-205(4)(b)" for "90-6-205(5)(b)"; deleted former (2) relating to loans (see 1997 Session Law for text); in (2), in introductory clause in two places, deleted reference to loan; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

90-6-210. Coal area highway reconstruction program. (1) The department of transportation, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under 23 U.S.C. 143, shall prepare a special construction program for the reconstruction of deficient sections of these highways in consultation with the governing bodies of the counties in the area.

(2) The department of transportation shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this section and any federal funds that may be made available to match those funds. Until federal funds are made available to match the funds allocated under this section, the department of transportation may, upon approval of the Montana state transportation commission, expend funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(3) Funds allocated under this section may not be used to match apportionments made for primary and secondary highways under the Federal-Aid Highway Acts; however, this section may not be construed to prohibit the implementation of projects otherwise funded by apportionments made under the Federal-Aid Highway Acts. In addition, planning and reconstruction projects may be financed in whole or in part by public and private funds provided that the projects conform to the applicable standards, regulations, and procedures of the department of transportation and the federal highway administration.

History: En. 50-1703 by Sec. 4, Ch. 502, L. 1975; amd. Sec. 2, Ch. 540, L. 1977; R.C.M. 1947, 50-1803(2) thru (4); amd. Sec. 1, Ch. 542, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 312, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), in two places, and in (3), in two places, substituted "section" for "subsection"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Federal-aid funds, Title 60, ch. 3, part 1.

Purpose, 90-6-201.

Accounts established — coal area highway improvement account, 90-6-202.

90-6-211. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. 50-1710 by Sec. 11, Ch. 502, L. 1975; R.C.M. 1947, 50-1810; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 384, L. 1983; amd. Sec. 26, Ch. 658, L. 1987; amd. Sec. 8, Ch. 662, L. 1987.

90-6-212. Repealed. Sec. 7, Ch. 204, L. 1997.

History: En. Sec. 9, Ch. 662, L. 1987; amd. Sec. 47, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 503, L. 1993; amd. Sec. 80, Ch. 509, L. 1995.

Part 3

Hard-Rock Mining Impact

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Allocation of metalliferous mines license tax, 15-37-117.

Mining generally, Title 82, ch. 2.

Reclamation, Title 82, ch. 4.

90-6-301. Declaration of necessity and purpose. The large-scale development of mineral deposits in the state may cause an influx of people directly related to the area of the development. This influx of people and the corresponding increase in demand for local government facilities and services may create a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. There is therefore a need to provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development.

History: En. Sec. 2, Ch. 617, L. 1981; amd. Sec. 2, Ch. 311, L. 1987.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

Montana Major Facility Siting Act, Title 75, ch. 20.

90-6-302. Definitions. In this part, the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of the large-scale mineral development.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale

mineral development if the mine owner and operator are small miners as defined in 82-4-303.

(5) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;
(b) public hospital district;
(c) refuse disposal district;
(d) county water and sewer district;
(e) county water district;
(f) county sewer district; or
(g) park district.

History: En. Sec. 3, Ch. 617, L. 1981; amd. Sec. 8, Ch. 453, L. 1985; amd. Sec. 4, Ch. 582, L. 1985; amd. Sec. 1, Ch. 227, L. 1991.

90-6-303. Chairman — meetings — facilities — funding. (1) The board shall elect a chairman from among its members.

(2) The board shall meet as necessary or as called by the chairman or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board shall be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37.

History: En. Sec. 4, Ch. 617, L. 1981; amd. Sec. 7, Ch. 619, L. 1983.

90-6-304. Accounts established. (1) There is within the state agency fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve account not to exceed $100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve account; and

(iii) for distribution to the counties of origin, as provided by 90-6-331(1) and this section.

(b) Money within the hard-rock mining impact trust reserve account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve account revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve account in the amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board.

History: En. Sec. 5, Ch. 617, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 619, L. 1983; amd. Sec. 14, Ch. 672, L. 1989; amd. Sec. 1, Ch. 616, L. 1991; amd. Sec. 55, Ch. 349, L. 1993.

Cross-References

Fund structure, 17-2-102.

Warrants, Title 17, ch. 8, part 3.

Hard-rock mining account, 82-4-311.

Fund transfer, 90-6-331.

90-6-305. Hard-rock mining impact board — general powers. (1) The board may:

(a) retain professional staff, including its administrative staff, and retain consultants and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings, determinations, and administration of this part;

(c) award grants to local government units subject to 90-6-306;

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(e) make determinations as provided in 90-6-307, 90-6-311, and 90-6-403(3); and

(f) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

History: En. Sec. 6, Ch. 617, L. 1981; amd. Sec. 2, Ch. 489, L. 1983; amd. Sec. 9, Ch. 619, L. 1983; amd. Sec. 15, Ch. 672, L. 1989; amd. Sec. 1, Ch. 376, L. 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-306. Basis for awarding grants. Grants shall be awarded to local government units on the basis of:

(1) need;

(2) severity of impact from mineral development;

(3) availability of funds; and

(4) extent of local effort in meeting its needs.

History: En. Sec. 7, Ch. 617, L. 1981; amd. Sec. 10, Ch. 619, L. 1983; amd. Sec. 16, Ch. 672, L. 1989.

90-6-307. Impact plan to be submitted. (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of the submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services that can be expected as a result of the development;

(d) the financial or other assistance that the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, whether from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county shall contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection must be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services that can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons for the objection. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds that there is no reasonable basis for the request. If an objection is not received within the 90-day period or any extension of the period,

the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing. The impact plan filed by the developer does not carry a presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan that were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, must be served by the board upon all parties. A local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guaranty that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of environmental quality of its receipt of the written guaranty of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction,

the local government unit must be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded are in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of environmental quality that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons. However, any revocation must be requested by an affected local government unit, and notice and opportunity for hearing must be given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance.

History: En. Sec. 8, Ch. 617, L. 1981; amd. Sec. 3, Ch. 489, L. 1983; amd. Sec. 4, Ch. 24, L. 1985; amd. Sec. 5, Ch. 582, L. 1985; amd. Sec. 3, Ch. 311, L. 1987; amd. Sec. 7, Ch. 227, L. 1991; amd. Sec. 496, Ch. 418, L. 1995.

Cross-References

Notice — actual and constructive, 1-1-217.

Requirements for compliance with notice provisions, 2-3-104.

Open meetings, Title 2, ch. 3, part 2.

Hearing — rules of evidence, cross-examination, and judicial notice, 2-4-612.

Local government — general provisions related to services, Title 7, ch. 11.

Local government — utility services, Title 7, ch. 13.

Local government — culture, social services, and recreation, Title 7, ch. 16.

Local government — general emergency and protective services, Title 7, ch. 31.

Allowable costs, Title 25, ch. 10, part 2.

Attorney fees, Title 25, ch. 10, part 3.

90-6-308. Permit procedure and review of impact plan to run concurrently. It is intended that the procedure for fulfilling the permit requirement of 82-4-335 and the review of the impact plan by the board under 90-6-307(5) and (6), if review occurs, are to run concurrently.

History: En. Sec. 9, Ch. 617, L. 1981; amd. Sec. 4, Ch. 311, L. 1987.

90-6-309. Tax prepayment — large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy established under 20-25-423 and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

History: En. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985; amd. Sec. 48, Ch. 11, Sp. L. June 1989; amd. Sec. 55, Ch. 633, L. 1993.

Cross-References

Property tax levies, Title 15, ch. 10.

Tax prepayment — new industrial facilities, 15-16-201.

90-6-310. Local government facility impact bonds. (1) When the need for the construction, renovation, improvement, or acquisition of local government facilities as a result of the large-scale mineral development is determined under 90-6-307, the owners of a large-scale mineral development may enter into a written agreement with the local government unit having the burden for the increased capital and operating costs expected to be incurred by the facilities. The local government unit may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial local government facility impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development shall provide for a payment guarantee, in addition to the taxes imposed by the local government unit on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds shall not be an obligation of the local government unit, but shall be special obligations limited to the revenue derived from the special tax levy. A local government unit shall establish a levy and, to the extent bonds are issued as provided in this section, shall pledge the special fund and all revenues of the special tax levy to the repayment of the bonds.

(3) The debt limits set forth in 7-7-2203, 7-7-4201, and 20-9-406 do not apply to bonds issued in accordance with this section. The interest on such bonds shall not be subject to state taxes.

(4) The impact bonds shall be authorized by the governing body of the local government unit by a resolution that states:

(a) the facility for which the bonds are issued;

(b) the amount of the bonds;

(c) the rate of interest the bonds bear;

(d) the date of the bonds and the maturity date or dates of the bonds;

(e) the dates interest is payable on the bonds;

(f) the redemption options, if any, with respect to the bonds; and

(g) the manner of execution of the bonds.

(5) The impact bonds shall be:

(a) in registered form as to principal and interest;

(b) payable in installments and at times not exceeding 30 years from their date of issuance; and

(c) payable at a place or places and be evidenced in a manner the governing body determines is in the best interest of the local government unit.

(6) Any impact bonds issued under the authority of this section may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds.

(7) If more than one local government unit adopts a resolution to issue impact bonds, the local government units may enter into an interlocal agreement under 7-11-101 through 7-11-105, 7-11-107, and 7-11-108, providing for the issue of impact bonds of the local government units to be combined in a single offering, if the governing body of each local government unit authorizing the bonds determines that the pooling of bonds:

(a) is in the best interest of the local government units;

(b) will facilitate the sale of the bonds under more advantageous terms;

(c) will lower the interest rates; or

(d) will lower the cost of issuance.

(8) In addition to the specific requirements of 7-11-105, the interlocal agreement shall provide:

(a) that the bond titles shall denote that impact bonds of different local government units have been pooled and shall refer to each local government unit executing the interlocal agreement;

(b) for a single debt service fund, to be held by a qualified trust company, to which each local government unit shall pledge and pay the annual special tax levies levied against the large-scale mineral development; and

(c) that the bonds are payable solely from and against the debt service funds under the interlocal agreement.

History: En. Sec. 11, Ch. 617, L. 1981; amd. Sec. 2, Ch. 227, L. 1991.

Cross-References

Bond issues, Title 17, ch. 5.

School district bond issues for certain purposes, 20-9-403.

School district bonds — purpose and authorization of building reserve fund by election, 20-9-502.

90-6-311. Impact plan amendments. (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

History: **En. Sec. 5, Ch. 489, L. 1983; amd. Sec. 7, Ch. 582, L. 1985; amd. Sec. 6, Ch. 227, L. 1991.**

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Contested cases — informal hearings, 2-4-603.

Contested cases — hearing, 2-4-612.

90-6-312 through 90-6-320 reserved.

90-6-321. Repealed. Sec. 21, Ch. 672, L. 1989.

History: **En. Sec. 2, Ch. 619, L. 1983.**

90-6-322. Repealed. Sec. 21, Ch. 672, L. 1989.
History: En. Sec. 3, Ch. 619, L. 1983.

90-6-323. Local government budget authority. A local government unit may budget and expend payments received from a mineral developer under this part or part 4 of this chapter or pursuant to a plan approved under this part. If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payment.
History: En. Sec. 8, Ch. 582, L. 1985.

90-6-324 through 90-6-330 reserved.

90-6-331. Fund transfer. (1) On July 1, 1990, and prior to each October 1 thereafter, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust reserve account established in 90-6-304(2) as of September 1 immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds so transferred must be deposited in the county hard-rock mine trust reserve account established in 7-6-2225.

(2) The transfer of funds required by this section is a statutory appropriation pursuant to 17-7-502.
History: En. Sec. 10, Ch. 672, L. 1989; amd. Sec. 2, Ch. 376, L. 1991; amd. Sec. 2, Ch. 616, L. 1991.

Part 4

Hard-Rock Mining Impact Property Tax Base Sharing

Part Cross-References

Residence — rules for determining, 1-1-215.

Property subject to taxation — classification, Title 15, ch. 6, part 1.

Tax appraisal, Title 15, ch. 7, part 1.

Tax assessment procedure, Title 15, ch. 8.

Tax equalization, Title 15, ch. 9, part 1.

Statewide tax levies, Title 15, ch. 10, part 1.

Mining license taxes, Title 15, ch. 37.

Resource indemnity trust tax, Title 15, ch. 38.

90-6-401. Declaration of necessity and purpose. The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be equitably distributed among affected local government units.
History: En. Sec. 1, Ch. 635, L. 1983.

90-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.

(2) "Board" means the hard-rock mining impact board established in 2-15-1822.

(3) "Jurisdictional revenue disparity" means property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(4) "Large-scale mineral development", for the purposes of this part, is defined in 90-6-302.

(5) "Local government unit", for the purposes of this part, means a county, municipality, or school district.

(6) "Mineral development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(7) "Mineral development student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(8) "Taxable valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1.

History: En. Sec. 2, Ch. 635, L. 1983; amd. Sec. 88, Ch. 11, Sp. L. June 1989.

90-6-403. Jurisdictional revenue disparity — conditioned exemption and reallocation of certain taxable valuation. (1) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in this section and 90-6-404, the increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in 90-6-404. The increase in taxable valuation allocated as provided in 90-6-404 is subject to the application of property tax mill levies in the local government unit to which it is allocated.

(2) The total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school BASE funding programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board.

History: En. Sec. 3, Ch. 635, L. 1983; amd. Sec. 5, Ch. 311, L. 1987; amd. Sec. 55, Ch. 633, L. 1993.

90-6-404. Allocation of taxable valuation for local taxation purposes. When property of a large-scale mineral development is subject to the provisions of 90-6-403, the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) If the board determines that the local government unit in which the ore body or the mineral deposit being mined is located is not affected by the development and if this determination is shown on the impact plan, 20% of the total increase in taxable valuation of the gross proceeds must be allocated to that local government unit. This provision is intended to establish a minimum allocation for the units and does not prohibit proof by a unit that actual direct impacts would exceed 20% of the total impacts of the development.

(2) The remaining increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development.

History: En. Sec. 4, Ch. 635, L. 1983; amd. Sec. 1, Ch. 760, L. 1991.

90-6-405. Employee surveys. (1) Each large-scale mineral development subject to the provisions of 90-6-403 and 90-6-404 shall, on or before May 1 of each year, conduct a survey of its employees and promptly submit a report of its findings to the department of revenue. The report must include:

(a) the number of mineral development employees residing within each affected county;

(b) the number of mineral development employees residing within each affected municipality;

(c) the number of mineral development students residing in each affected high school district; and

(d) the number of mineral development students residing in each affected elementary school district.

(2) The initial allocation of the increase in taxable valuation made as provided in 90-6-403 and 90-6-404 shall be made on the basis of the place of residence of employees and the district of enrollment of students as projected in the approved impact plan for that period of time between the issuance and validation of the permit and the submission of an employee survey as provided for in this section.

History: En. Sec. 5, Ch. 635, L. 1983.

Part 5

Reverse Annuity Mortgage Loan

90-6-501. Short title. This part may be cited as the "Reverse Annuity Mortgage Loan Act".

History: En. Sec. 1, Ch. 178, L. 1989.

90-6-502. Purpose. Many elderly citizens in Montana own their own homes and have little or no remaining mortgage debt. Many of these homeowners are persons of lower income who would benefit from an additional income source from the use of the equity in their homes. The legislature finds that reverse annuity mortgage loans would enable elderly homeowners to provide more substantially for their own in-home support and specialized care. The purpose of this part is to:

(1) establish a reverse annuity mortgage loan program within the board of housing;

(2) authorize the board to make reverse annuity mortgage loans;

(3) counsel, assist, and protect elderly homeowners who wish to obtain a reverse annuity mortgage loan; and

(4) administer a reverse annuity mortgage loan program that does not jeopardize the mortgagor's eligibility for medicaid and other means-tested programs.

History: En. Sec. 2, Ch. 178, L. 1989.

90-6-503. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:

(1) "Mortgage" means a mortgage as defined in 90-6-103.

(2) "Mortgagee" means the holder of a mortgage or its assignee.

(3) "Mortgagor" means a person:

(a) who is of lower income as determined by the board. In its determination of lower income, the board shall take into consideration the criteria in 90-6-103(16).

(b) 68 years of age or older, except as provided on a case-by-case basis in accordance with program guidelines established by the board of housing;

(c) who is the owner and occupant of a single-family dwelling; and

(d) who has completed a reverse annuity mortgage counseling program approved by the board.

(4) "Reverse annuity mortgage loan" means a loan in which loan proceeds are advanced to the mortgagor to provide a monthly tax-free cash payment for 10 years.

(5) "Single-family dwelling" means a one- to four-family living unit.

History: En. Sec. 3, Ch. 178, L. 1989; amd. Sec. 1, Ch. 39, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 39 in definition of mortgagor, in (b) after "older", inserted exception clause; in (3)(c), at end, deleted "that is unencumbered by any prior mortgage, lien, or pledge"; in definition of single-family dwelling, at end, deleted "excluding a condominium as defined in 70-23-102"; and made minor changes in style. Amendment effective March 12, 1997.

90-6-504. Reverse annuity mortgage loan program. The board may make reverse annuity mortgage loans that are secured by a single-family dwelling located in this state. The loans must be made under terms and conditions adopted by the board pursuant to its authority under 90-6-104.

History: En. Sec. 4, Ch. 178, L. 1989.

90-6-505. Mortgage requirements. (1) Any mortgage securing payments made by a mortgagee to a mortgagor pursuant to a reverse annuity mortgage loan must be sufficiently definite, certain, and valid to secure all money actually advanced pursuant to and in accordance with its terms. The mortgage must secure money advanced at or subsequent to closing of the loan, up to but not exceeding the full amount of the loan. A reverse annuity mortgage has the same priority as if all money had been advanced at the time the mortgage was delivered. The mortgage must include but not be limited to the following:

(a) a statement that it is a reverse annuity mortgage loan;

(b) the full amount of the loan authorized;

(c) a statement of the dates on which advancements are to be made and the amounts of such advancements; and

(d) the events that will give rise to the maturity of the loan.

(2) The mortgagee and the mortgagor may modify the advancement dates in the mortgage by a statement signed by all parties to the mortgage and properly recorded with the original mortgage instrument. The modification may not limit or otherwise affect the priority of the mortgage.

History: En. Sec. 6, Ch. 178, L. 1989.

90-6-506. Repayment or termination of reverse annuity mortgage loan. (1) The mortgagor shall repay the reverse annuity mortgage loan as provided in this section.

(2) Repayment of any part of the reverse annuity mortgage loan is not required prior to the maturity of the loan and while the mortgagor resides on the secured property. The mortgagor may pay the outstanding loan balance in full at any time without penalty.

(3) The reverse annuity mortgage loan matures, advances under a reverse annuity mortgage loan terminate, and the entire unpaid balance of the loan plus accrued interest becomes due and payable only upon the occurrence of any of the following events:

(a) the death of the last surviving mortgagor;

(b) the sale or other transfer of the secured property to a person other than any of the original mortgagors;

(c) vacation of the secured property by the mortgagor, whether voluntarily, involuntarily, or pursuant to legal process; or

(d) any other occurrence that materially decreases the value of the property securing the loan or that will have the likely effect of causing the loan to not be repaid.

(4) Any occurrence allowing the termination of a loan as provided in subsection (3)(d) must be clearly recited in the mortgage, deed of trust, or trust indenture.

(5) Payment of the reverse annuity mortgage loan may not be required from any source other than the secured property.

History: En. Sec. 5, Ch. 178, L. 1989.

90-6-507. Rulemaking authority. The board shall adopt all procedural and substantive rules necessary for the administration of this part, including rules required to secure, implement, and administer the reverse annuity mortgage loan program.

History: En. Sec. 7, Ch. 178, L. 1989.

Part 6 reserved

Part 7

Treasure State Endowment Program

90-6-701. Treasure state endowment program created — definitions. (1) (a) There is a treasure state endowment program that consists of:

(i) the treasure state endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The treasure state endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, or a county or multicounty water, sewer, or solid waste district.

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1).

History: En. Sec. 1, Ch. 3, Sp. L. January 1992; amd. Sec. 1, Ch. 432, L. 1993.

90-6-702. Purpose. The purpose of the treasure state endowment program is to assist local governments in funding infrastructure projects that will:

(1) create jobs for Montana residents;

(2) promote economic growth in Montana by helping to finance the necessary infrastructure;

(3) encourage local public facility improvements;

(4) create a partnership between the state and local governments to make necessary public projects affordable;

(5) support long-term, stable economic growth in Montana;

(6) protect future generations from undue fiscal burdens caused by financing necessary public works;

(7) coordinate and improve infrastructure financing by federal, state, local government, and private sources; and

(8) enhance the quality of life and protect the health, safety, and welfare of Montana citizens.

History: En. Sec. 2, Ch. 3, Sp. L. January 1992.

90-6-703. Types of financial assistance available. (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) annual debt service subsidies on local infrastructure projects; and

(c) loans from the proceeds of coal severance tax bonds at a subsidized interest rate.

(2) The department of natural resources and conservation and the department of commerce:

(a) may adopt rules to commit to interest rate subsidies for local infrastructure projects and may allow the subsidies to be paid over the life of the loan or bonding period; and

(b) may make deferred loans to local governments for preliminary engineering study costs. The applicant shall repay the loans whether or not the applicant succeeds in obtaining financing for the full project. Repayment may be postponed until the overall construction financing is arranged.

History: En. Sec. 5, Ch. 3, Sp. L. January 1992; amd. Sec. 2, Ch. 432, L. 1993; amd. Sec. 497, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-704 through 90-6-709 reserved.

90-6-710. Priorities for projects — procedure — rulemaking. (1) The department of commerce must receive proposals for projects from local governments as defined in 90-6-701(3)(b). The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. The department shall prepare and submit a list containing the recommended projects and the recommended form of financial assistance for each project to the governor, prioritized pursuant to subsection (2). The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems;

(b) projects that enable local governments to meet state or federal health or safety standards;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that result in a benefit to the public commensurate with the amount of financial assistance. However, the benefit to the public may not be measured by population alone.

(e) projects that reflect greater need for financial assistance than other projects;

(f) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(g) projects that provide long-term, full-time job opportunities for Montanans;

(h) projects that provide public facilities necessary for the expansion of a business that has a high potential for financial success;

(i) projects that maintain the tax base or that do not discourage expansion of the tax base; and

(j) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program.

History: En. Sec. 6, Ch. 3, Sp. L. January 1992; amd. Sec. 3, Ch. 432, L. 1993.

CHAPTER 7

HEALTH FACILITY DEVELOPMENT

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Chapter Cross-References

Montana Health Facility Authority — creation, 2-15-1815.

Hospitals and related facilities, Title 50, ch. 5.

Part 1
General Provisions

90-7-101. Short title. This chapter may be cited as the "Montana Health Facility Authority Act".

History: **En. Sec. 2, Ch. 703, L. 1983.**

90-7-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) "Facility" means any health care facility or prerelease center provided for in 90-7-104.

(5) (a) “Institution” means any public or private:

(i) nonprofit hospital, corporation, or other organization authorized to provide or operate a health facility in this state; or

(ii) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state.

(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:

(i) a network of health care providers, regardless of how it is organized;

(ii) an integrated health care delivery system;

(iii) a joint venture or partnership between or among health care providers;

(iv) a purchasing alliance composed of health care providers;

(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.

(6) “Participating institution” means a health institution or prerelease center that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of a facility pursuant to the provisions of this chapter.

(7) “Revenues” means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of the facilities.

History: En. Sec. 3, Ch. 703, L. 1983; amd. Sec. 1, Ch. 673, L. 1991; amd. Sec. 1, Ch. 477, L. 1997; amd. Sec. 1, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 477 substituted definition of facility for definition of health facility that read: ““Health facility” means any facility provided for in 90-7-104”; substituted institution for health institution as defined term and inserted (a)(ii) defining institution to include nonprofit prerelease center, corporation, or other organization authorized to operate state prerelease center; substituted participating institution for participating health institution as defined term, after “health institution” inserted “or prerelease center”, and before “facility” deleted “health”; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 479 in definition of institution inserted (b) to include a certain health care provider network, integrated delivery system, joint venture or partnership, purchasing alliance, or insurers and third-party administrators; and made minor changes in style.

90-7-103. Allowable costs. Costs eligible for financing or refinancing under this chapter include:

(1) the total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, and improvement of an eligible facility and the acquisition of all real and personal property interests necessary or useful in connection with the facility and all other undertakings that the authority considers reasonable or necessary for the development of the facility;

(2) the cost of demolishing or removing any building or structure on land so acquired, the cost of acquiring any land to which the building or structure may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if judged advisable by the authority, for a period after completion of construction, and the cost of financing the facility, including interest on bonds and notes issued by the authority to finance the facility;

(3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including without limitation the cost of studies and surveys;

(4) the costs for land title and mortgage guaranty policies;

(5) the costs of plans, specifications, and architectural and engineering services;

(6) the costs of legal, organization, marketing, or other special services;

(7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;

(8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(9) all other expenses necessary and incidental to the construction and acquisition of the facility, the financing of construction, and the acquisition and placing of the facility into operation.

History: En. Sec. 5, Ch. 703, L. 1983; amd. Sec. 2, Ch. 477, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 477 in (1), after "eligible", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

90-7-104. Eligible facility. (1) The term "eligible facility" means any structure or building suitable for use as:

(a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

(b) a public health center, as defined in 7-34-2102;

(c) a facility for persons with disabilities;

(d) a chemical dependency treatment facility;

(e) a nursing school;

(f) a medical teaching facility;

(g) a laboratory;

(h) a dental care facility;

(i) a prerelease center;

(j) a diagnostic, treatment, or surgical center; or

(k) a structure or facility related to any of the uses enumerated in subsections (1)(a) through (1)(j) or required or useful for the operation of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through (1)(j).

(2) An eligible facility does not include:

(a) items such as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and

(b) a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

History: En. Sec. 4, Ch. 703, L. 1983; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 19, Ch. 93, L. 1997; amd. Sec. 80, Ch. 472, L. 1997; amd. Sec. 3, Ch. 477, L. 1997; amd. Sec. 2, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 93 inserted (1)(b) regarding a public health center, as defined in 7-34-2102. Amendment effective March 19, 1997.

Chapter 472 in former (1)(c) substituted "facilities for persons with disabilities" for "center for persons with developmental disabilities"; and in (1)(d) substituted "chemical dependency treatment facilities" for "chemical dependency treatment center".

Chapter 477 throughout section, before "facility", deleted "health"; inserted (1)(i) regarding a prerelease center; in (1)(k), before "facility", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 479 in (1)(c) substituted "a facility" for "center"; inserted (1)(j) expanding eligible health facility definition to include diagnostic, treatment, or surgical center; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

90-7-105 through 90-7-110 reserved.

90-7-111. Credit of state not pledged — statement on obligation required. (1) Obligations issued under the provisions of this chapter do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the institution being financed.

(2) An obligation issued under this chapter must contain on the face of the obligation a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. Sec. 18, Ch. 703, L. 1983; amd. Sec. 4, Ch. 477, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 477 near end of (1), before "institution", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Security of bondholders, 90-7-304.

Pledge by state not to impair obligation and to properly administer program, 90-7-311.

Pledge of revenue, money, or property, 90-7-312.

90-7-112. Exemption from taxation — securities law. (1) The authority performs a public function for the benefit of the people of the state for the improvement of their health and living conditions and is a public instrumentality of the state. Accordingly, the income or other revenues of the authority and all property owned by the authority and any bonds, notes, or other obligations issued under this chapter, their transfer, and income therefrom, including any profit made on the sale thereof, are exempt at all times from all taxation in the state of Montana.

(2) Bonds issued by the authority are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

History: En. Sec. 19, Ch. 703, L. 1983.

Cross-References

Individual income taxes — exemptions from adjusted gross income, 15-30-111.

Individual income tax — exemptions, 15-30-112.

Organizations exempt from tax, 15-31-102.

Securities regulation, Title 30, ch. 10.

Montana Securities Act, Title 30, ch. 10, parts 1 through 3.

90-7-113. Bonds as legal investment. (1) Bonds issued by the authority under the provisions of this chapter are securities in which funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) personal representatives, public administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under this chapter are securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is authorized by law.

History: En. Sec. 23, Ch. 703, L. 1983.

Cross-References

State finance — permissible investments, 17-6-211.

Investments of financial institutions, 32-1-424.

Insurance companies — investments, Title 33, ch. 2, part 8.

Industrial development revenue bonds, 90-5-103.

90-7-114 through 90-7-120 reserved.

90-7-121. Biennial audit. The authority's books and records must be audited at least once each biennium, by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the authority's funds.

History: En. Sec. 26, Ch. 703, L. 1983; amd. Sec. 1, Ch. 220, L. 1989.

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

Part 2

Authority

Administration, Powers, and Limitations

90-7-201. Authority — quorum — mode of action — expenses. (1) Four members of the authority constitute a quorum for the purpose of conducting business. Action may be taken by the authority upon the affirmative vote of at least four of its members. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(2) Each meeting of the authority for any purpose must be open to the public as provided for in Title 2, chapter 3, part 2. Resolutions need not be published or posted.

(3) Each member is entitled to be paid $50 for each day that the member is actually and necessarily engaged in the performance of board duties plus cost of travel, lodging, and meals as provided in 2-18-501 through 2-18-503.

History: En. Sec. 6, Ch. 703, L. 1983; amd. Sec. 1, Ch. 309, L. 1987; amd. Sec. 3, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 479 at end of first sentence in (2) substituted "as provided for in Title 2, chapter 3, part 2" for former second sentence that read: "Notice of meetings must be as provided in the bylaws of the authority"; and made minor changes in style.

Cross-References

Open meetings required, Art. II, sec. 9, Mont. Const.; 2-3-203.

90-7-202. Powers of authority. The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) invest any funds that are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to insure repayments required by loan agreements made by a lender. These agreements are subject to terms and conditions established by the authority.

(10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities from any funds;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

(a) acquire real or personal property or any right, interest, or easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;

(c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement with the holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible facilities whenever considered appropriate;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. The interest, fees, and charges must be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses, reasonable allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities.

(18) perform any other acts necessary and convenient to carry out the purposes of this chapter.

History: En. Sec. 7, Ch. 703, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 477, L. 1997; amd. Sec. 4, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 477 in (15), after "eligible", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 479 near beginning of (5), after "funds", deleted "obtained from the issuance of bonds and notes" and at end, after "authority", inserted "to be used to carry out the purposes of this chapter"; at beginning of (10) inserted "establish programs to make" and at end inserted "from any funds"; at end of (17) inserted "and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Lawsuits — security not required on behalf of state, 25-1-402.

Lawsuits — notice to Attorney General, Title 25, ch. 1, part 5.

Property, Title 70.

Mortgages, Title 71, ch. 1.

Foreclosure, 71-1-221 through 71-1-235.

90-7-203. Staff of authority. The authority may employ or contract for any professional staff or consultants necessary. Such employment and contracting must be done in consultation with the department of commerce.

History: En. Sec. 9, Ch. 703, L. 1983.

Cross-References

State employees generally, Title 2, ch. 18.

Retained services to Board — negotiated fee, 90-7-211.

90-7-204. Agent of the authority. The authority may designate a participating institution as its agent for determining the location and character of an eligible facility undertaken by that institution under the provisions of this chapter. As agent, the institution may acquire, construct, reconstruct, renovate, replace, improve, maintain, repair, operate, lease, as lessee or lessor, and enter into contracts for any and all such purposes, including contracts for the management and operation of the facility.

History: En. Sec. 11, Ch. 703, L. 1983; amd. Sec. 6, Ch. 477, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 477 in two places in first sentence, after "participating" and "eligible", deleted "health". Amendment effective July 1, 1997.

Cross-References

Agency, Title 28, ch. 10.

90-7-205 through 90-7-210 reserved.

90-7-211. Necessary expenses — fees. (1) All expenses of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has been provided under this chapter, except for the purposes of meeting the necessary expenses of initial organization and operation and until the date that the authority derives money from funds provided under this chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating institution for financial assistance to provide for its facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. The initial planning service fee may be included in the cost of the facilities to be financed. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating institution in an amount determined by the authority. The annual planning service fee may be paid on the dates or in installments that are satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for facilities in the area concerned, and to that end the authority may utilize recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative, operating, and financing expenses;

(c) reserves for anticipated future expenses or loan losses; and

(d) loans to finance the costs of eligible facilities.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible facility for which application is being made or for other services or surveys that the authority considers necessary to carry out the purposes of this chapter.

History: En. Sec. 20, Ch. 703, L. 1983; amd. Sec. 7, Ch. 477, L. 1997; amd. Sec. 5, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 477 in first and third sentences in (2), after "participating", and in (3), after "eligible", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 479 at end of second sentence in (2), after "financed", deleted "and is not refundable by the authority, whether or not any application is approved"; in (2)(b) inserted "operating, and financing"; in (2)(c) inserted "or loan losses"; inserted (2)(d) relating to loans to finance the costs of eligible facilities; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

90-7-212. Purchase of bonds by authority. The authority may purchase its bonds or notes. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

History: En. Sec. 15, Ch. 703, L. 1983.

90-7-213. Loan limitation. A loan made by the authority may not exceed the total cost or appraised value of the eligible facility being financed as the cost or appraised value is determined by the participating institution and approved by the authority.

History: En. Sec. 10, Ch. 703, L. 1983; amd. Sec. 8, Ch. 477, L. 1997; amd. Sec. 6, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 477 after "eligible" deleted "health"; and made minor changes in style.

Amendment effective July 1, 1997. Chapter 479 in two places, after "cost", inserted "or appraised value"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

Cross-References

Aggregate biennial bonding and borrowing authority, 90-7-302.

90-7-214. Restriction on operating facility — leases. (1) The authority may not operate an eligible facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate to pay the principal and interest due on bonds and to create and maintain reserves and accounts for depreciation as the authority determines necessary.

(2) The lease may contain terms and conditions that the authority considers proper. The lease may be terminated upon failure of the participating institution to comply with any obligation under the lease. The lease may include a renewal or an option to purchase provision upon terms or conditions as the authority considers desirable.

(3) Upon payment of all indebtedness incurred by the authority for financing a facility, the authority may convey any or all of the facility to the lessee, with or without consideration.

History: En. Sec. 8, Ch. 703, L. 1983; amd. Sec. 9, Ch. 477, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 477 in (1), after "eligible", deleted "health"; in second sentence in (2), after "participating", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

90-7-215 through 90-7-219 reserved.

90-7-220. Montana developmental center loan. (1) The department of public health and human services may enter into a loan agreement with the Montana health facility authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term of not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenues obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenues obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Whenever the foregoing facility revenues exceed the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for persons with developmental disabilities, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenues and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenues of the state, except the facility revenues as provided in this section.

History: En. Sec. 1, Ch. 819, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 513, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 565, Ch. 546, L. 1995; amd. Sec. 64, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 in (2), near middle after "due under the loan agreement", deleted former fourth sentence that read: "Principal and interest payments constitute a statutory appropriation within the meaning of 17-7-502." Amendment effective July 1, 1997.

90-7-221. Montana state hospital loan. (1) The department of public health and human services may enter into a loan agreement with the authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for the mentally ill at the Montana state hospital in Warm Springs, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $21 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs. The loan must be payable over a term not to exceed 25 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise that are not inconsistent with this section and that the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana state hospital facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable from the facility revenue obtained by the department from the ownership and operation of and the provision of services at the Montana state hospital and the Montana mental health nursing care center, including payments or reimbursements from private users, insurers, and the state or federal government. All facility revenue obtained from services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments due under the loan agreement. Whenever the foregoing facility revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited as provided in 53-1-413. As long as the loan remains outstanding and the state provides services for the mentally ill, the department shall use the Montana state hospital and the Montana mental health nursing care center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding the provisions of 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenue of the Montana state hospital and the Montana mental health nursing care center and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenue of the state, except the facility revenue as provided in this section.

History: En. Sec. 1, Ch. 557, L. 1995; amd. Sec. 65, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 in (2), near middle after "due under the loan agreement", deleted former fourth sentence that read: "Principal and interest payments constitute a statutory appropriation within the meaning of 17-7-502." Amendment effective July 1, 1997.

90-7-222 through 90-7-225 reserved.

90-7-226. Procedure prior to financing projects. In addition to meeting the other requirements contained in this chapter or in state or federal law, the following requirements must be met before financing is finalized and provided for a prerelease center:

(1) A contract must be approved by the authority and executed by the department of corrections and the institution.

(2) The department of corrections, the institution, and any other third parties involved in the financing are required to execute, covenant, deliver, and assign as necessary all documents, representations, assignments, collateral, and any other conditions that the authority or its agents, underwriters, or attorneys may reasonably determine to be necessary to adequately protect the authority, the department of corrections, and the state from default, financial loss, or other harm and to provide an opportunity to lower borrowing costs.

(3) The prerelease center project must be determined to be in the public interest and to be consistent with the legislative policies governing the provision of the services.

(4) The applicant shall submit a statement indicating that contracts to construct the prerelease center project will require all contractors to comply with Title 18, chapter 2, part 4.

(5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement regarding a prerelease center project to provide for the payment of debt service on the bonds issued to finance the project, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds.

History: En. Sec. 15, Ch. 477, L. 1997.

Compiler's Comments

Effective Date: Section 20, Ch. 477, L. 1997, provided: "[This act] is effective July 1, 1997."

90-7-227. Public hearing. The department of corrections, when seeking funding under this chapter, shall hold a public hearing to determine whether or not the proposed project is in the public interest. The decision regarding public interest is determined by the department of corrections, not the authority. Notice of the public hearing must be published in a newspaper of general circulation in the community where the prerelease center would be located. Notice must be given at least once a week for 2 weeks prior to the date of the public hearing. The notice must include the time and place of the hearing, the general nature of the prerelease center project, the name of the borrower or user of the project, the estimated cost of the project, and the maximum amount of financing assistance to be provided under this chapter. A determination by the department of corrections that a prerelease center project is in the public interest does not require that it be financed under this chapter.

History: En. Sec. 16, Ch. 477, L. 1997.

Compiler's Comments

Effective Date: Section 20, Ch. 477, L. 1997, provided: "[This act] is effective July 1, 1997."

90-7-228. Additional reserves, funds, and accounts. The authority may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this chapter or to comply with the provisions of its resolution or agreements.

History: **En. Sec. 17, Ch. 477, L. 1997.**

Compiler's Comments

Effective Date: Section 20, Ch. 477, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 3
Notes and Bonds

Part Cross-References

U.C.C. — form of negotiable instruments, 30-3-104.

U.C.C. — investment securities, Title 30, ch. 8.

90-7-301. Notes. The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any facility, and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution authorizing bonds of the authority. The authority may include in its notes any terms, covenants, or conditions that it is authorized to include in any bonds. All notes must be payable from the proceeds of bonds, renewal notes, the revenues of the authority, or other money available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

History: **En. Sec. 12, Ch. 703, L. 1983.**

Cross-References

Credit of state not pledged — statement required on face of obligation, 90-7-111.

90-7-302. Bonds and notes of the authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $250 million, exclusive of bonds or notes issued to refund outstanding bonds or notes.

(2) Bonds must be authorized. The authority may specify that the bonds must be dated and must mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must:

(a) bear interest at a rate or rates;
(b) be in denominations;
(c) be in the proper registered or bearer form;
(d) be executed in a manner;
(e) be payable in a medium of payment and at a place or places; and
(f) be subject to terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter.

History: En. Sec. 13, Ch. 703, L. 1983; amd. Sec. 1, Ch. 319, L. 1985; amd. Sec. 5, Ch. 464, L. 1993; amd. Sec. 7, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 479 in (1) increased bond authority from $150 million to $250 million; and made minor changes in style.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

90-7-303. Procedure for issuance of bonds. (1) The authority may not undertake to finance any eligible facility unless, prior to the issuance of any bonds or notes, the members find that the facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health care facilities or by a prerelease center for the purpose of preparing persons to reenter society.

(2) The authority may not allow the proceeds of any bonds or notes to be expended for any health care facility unless the facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has been shown that the facility is financially feasible and that there will be sufficient revenues to ensure that principal and interest payments are made when they become due.

(4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has considered the ability of the institution to operate the facility based on the institution's experience and expertise.

(5) The authority shall ensure that its financings consistently provide fair and realistic terms and covenants sufficient to protect the position of the lenders or bondholders.

History: En. Sec. 16, Ch. 703, L. 1983; amd. Sec. 1, Ch. 326, L. 1985; amd. Sec. 10, Ch. 477, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 477 near beginning of (1), after "eligible", deleted "health" and at end inserted "or by a prerelease center for the purpose of preparing persons to reenter society"; near beginning of (2), before "facility", inserted "health care"; in two places in (4), before "institution" and "institution's", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Credit of state not pledged — statement required on face of obligation, 90-7-111.

90-7-304. Security of bondholders. (1) The payment of the principal of and interest on any bonds issued under this chapter must be secured by a pledge of the revenues out of which the bonds are made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the participating institution;

(b) a pledge of the lease or loan agreement relating to the facility; or

(c) another security device that is considered most advantageous by the authority.

(3) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter and any mortgage given to secure the bonds, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, as the authority considers advisable. The provisions may not be in conflict with the provisions of this chapter, including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the facility covered by the proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of the facility;

(d) creation and maintenance of special funds from the revenues of the facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage, including a mortgage given by the lessee or borrower, securing bonds may provide that in the event of a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with the proceedings or the provisions of the mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment of the bonds or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that

any trustee under the mortgage or the holder of any of the bonds secured by the mortgage may become the purchaser at any foreclosure sale if the trustee is the highest bidder. A breach of an agreement may not impose any pecuniary liability upon the authority.

History: En. Sec. 14, Ch. 703, L. 1983; amd. Sec. 11, Ch. 477, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 477 in (2)(a), after "participating", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Receivers, Title 27, ch. 20.

Mandamus, Title 27, ch. 26.

Mortgages, Title 71, ch. 1.

Foreclosure, 71-1-221 through 71-1-235.

Pledges, Title 71, ch. 2.

Credit of state not pledged, 90-7-111.

Pledge of revenue, money, or property — validity, 90-7-312.

90-7-305. Trust agreement to secure bonds. In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Montana or outside of Montana, if it is determined by the authority to be in the best interest of financing the bonds. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the revenues to be received or the proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion of the project. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly any provisions that have been specifically authorized to be included in a resolution of the authority authorizing bonds. A bank or trust company incorporated under the laws of this state that may act as depository of the proceeds of bonds or of revenues or other money may furnish indemnifying bonds or pledge securities that may be required by the authority. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, a trust agreement or resolution may contain other provisions that the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust agreement or resolution may be treated as a part of the cost of the operation of an eligible facility.

History: En. Sec. 17, Ch. 703, L. 1983; amd. Sec. 12, Ch. 477, L. 1997; amd. Sec. 8, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 477 in last sentence, near end of section after "eligible", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 479 at end of first sentence, after "Montana", inserted "or outside of Montana, if it is determined by the authority to be in the best interest of financing the bonds"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

Cross-References

Trust company defined, 32-1-107.

90-7-306. Trust funds. All money received pursuant to this chapter, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, are trust funds to be held and applied solely as provided in this chapter. Any officer with whom or any bank or trust company with which such money is deposited shall act as trustee of the money and shall hold and apply it for the purposes of this chapter, subject to such regulations as this chapter and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing the obligations may provide.

History: **En. Sec. 22, Ch. 703, L. 1983.**

90-7-307. Conveyance of title. When the principal and interest on bonds issued by the authority to finance the cost of eligible facilities or to refinance outstanding indebtedness of one or more participating institutions, including any refunding bonds issued to refund and refinance bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the bonds and all other conditions of the resolution, lease, trust indenture, and mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the bonds have been satisfied and the lien of the mortgage or deed of trust or any other form of security arrangement has been released in accordance with the provisions of the security arrangement, the authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to deed of trust or any other form of security arrangement to secure the bonds to the participating institution or institutions.

History: **En. Sec. 21, Ch. 703, L. 1983; amd. Sec. 13, Ch. 477, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 477 near beginning, after "eligible", deleted "health" and near beginning and at end, after "participating", deleted "health"; and made minor changes in style. Amendment effective July 1, 1997.

90-7-308 through 90-7-310 reserved.

90-7-311. Pledge of state not to impair — to administer. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the authority and the holders of notes and bonds issued by the authority, including but not limited to an agreement to administer a loan program financed by the issuance of bonds, and to employ a staff sufficient and competent for this purpose.

History: **En. Sec. 24, Ch. 703, L. 1983.**

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Prohibition against impairment of contracts, Art. II, sec. 31, Mont. Const.

Montana Health Facility Authority, 2-15-1815.

90-7-312. Pledge of revenue, money, or property — validity. Any pledge made by the authority is valid and binding from the time the pledge is made. The revenue, money, or property pledged and received by the authority is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

History: **En. Sec. 25, Ch. 703, L. 1983.**

90-7-313 through 90-7-316 reserved.

90-7-317. Capital reserve account. (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit into the account, as provided in 90-7-319, for bonds issued to finance capital projects for community health facilities that contract with the state to provide health care services, bonds issued to finance the facilities described in 90-7-220 and 90-7-221, or bonds used to finance prerelease centers that contract with the state; and

(b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures of the authority authorizing their issuance.

(3) The authority may also deposit into the capital reserve account:

(a) revenue from fees and charges imposed by the authority;

(b) income from the investment of funds belonging to the authority; and

(c) any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under 90-7-320.

History: En. Sec. 2, Ch. 673, L. 1991; amd. Sec. 2, Ch. 513, L. 1993; amd. Sec. 5, Ch. 557, L. 1995; amd. Sec. 14, Ch. 477, L. 1997; amd. Sec. 9, Ch. 479, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 477 at end of (2)(a) inserted "or bonds used to finance prerelease centers that contract with the state"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 479 inserted introductory clause in (3) providing authority to deposit into capital reserve account; and made minor changes in style.

90-7-318. Administration of capital reserve account. (1) The authority may pledge funds from the capital reserve account or a subaccount created in the capital reserve account as security for the payment of bonds and notes issued by the authority, as it may determine in the resolutions or indentures providing for their issuance.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal and interest on bonds secured in whole or in part by the account or the debt service payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

(3) Funds in the capital reserve account may not, at any time, be withdrawn in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payments, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other funds pledged are not available.

(4) Income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the authority to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

History: En. Sec. 3, Ch. 673, L. 1991.

90-7-319. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the sum of minimum capital reserve requirements. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the minimum capital reserve requirements. All funds appropriated by the legislature for maintenance of the capital reserve account must be deposited in the account, as required in 90-7-317.

(2) All amounts appropriated to the authority under this section constitute advances to the authority and, subject to the rights of the holders of bonds or notes of the authority, must be repaid to the state general fund without interest from available operating revenues of the authority in excess of amounts required for the payment of bonds, notes, or other obligations of the authority, for maintenance of the capital reserve account, and for operating expenses.

History: En. Sec. 4, Ch. 673, L. 1991.

90-7-320. Loans — purchase of bonds and notes. Subject to the provisions of Title 17, chapter 6, the board of investments may, upon terms and conditions as the board considers reasonable:

(1) loan money to the authority for deposit in the capital reserve account; and

(2) purchase bonds and notes issued by the authority.

History: En. Sec. 5, Ch. 673, L. 1991.

CHAPTER 8

MONTANA CAPITAL COMPANY ACT

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90-8-321. Decertification.

Chapter Cross-References

Business incubator tax exemption, Title 15, ch. 24, part 18.

Functions of Department of Commerce — economic development, 90-1-105.

Part 1
General Provisions

90-8-101. Short title. This chapter may be cited as the "Montana Capital Company Act".

History: En. Sec. 1, Ch. 554, L. 1983.

90-8-102. Declaration of policy. (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in a Montana capital company or in a Montana small business investment capital company;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program that gives priority to investments in capital companies in the order in which they are qualified or in a Montana small business investment capital company will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana permanent coal tax trust fund to purchase debentures issued by a capital company or a Montana small business investment capital company will promote the business prosperity and economic welfare of the state and its citizens.

History: En. Sec. 2, Ch. 554, L. 1983; amd. Sec. 6, Ch. 124, L. 1987; amd. Sec. 82, Ch. 83, L. 1989; amd. Sec. 2, Ch. 263, L. 1991; amd. Sec. 15, Ch. 589, L. 1991.

Cross-References

Montana permanent coal tax trust fund — investment, 17-6-305.

90-8-103. Purpose. (1) The purpose of this chapter is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by this chapter must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new small business and industry in Montana, rehabilitating existing small business and industry, and stimulating and assisting in the expansion of small business activities that promote and maintain the economic stability of the state by providing maximum opportunities for employment of Montanans and improving the standard of living of the people of Montana.

(2) This chapter is aimed at:

(a) increasing the availability of development capital in order to encourage and assist in the creation, development, and expansion of small businesses based in Montana;

(b) aiding those businesses to which risk and equity financing are not readily or fully available through traditional sources, including those owned and operated by women and minorities;

(c) developing, preserving, diversifying, expanding, and strengthening the agricultural, industrial, and business base of Montana's economy, particularly for those small businesses utilizing the state's technical, managerial, and research resources in domestic and international markets; and

(d) providing the residents of Montana with greater opportunities to invest and participate in the economic development and potential of the state.

History: En. Sec. 3, Ch. 554, L. 1983.

90-8-104. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and is:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the department;

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

History: En. Sec. 4, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 154, Ch. 370, L. 1987; amd. Sec. 16, Ch. 581, L. 1987; amd. Sec. 1, Ch. 583, L. 1987; amd. Sec. 2, Ch. 708, L. 1989; amd. Sec. 3, Ch. 263, L. 1991; amd. Sec. 4, Ch. 467, L. 1991; amd. Sec. 1, Ch. 576, L. 1991.

90-8-105. Rulemaking. The department may adopt rules to implement the provisions of this chapter.

History: En. Sec. 17, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 2, Ch. 576, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-8-106. Fees. The department may charge fees commensurate with costs for the administration of this chapter. Fees for the administration of this chapter must be assessed to each qualified Montana capital company in a ratio proportionate to the tax credits allocated to the capital company divided by the total tax credits allocated to all qualified Montana capital companies.

History: En. Sec. 12, Ch. 576, L. 1991.

Part 2

Tax Credits
Investments in Capital Company

90-8-201. *(Temporary)* **Certification of Montana capital companies — certification of a Montana small business investment capital company.** (1) The department shall certify one Montana small business investment capital company, and from time to time the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that such investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) utilize the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) target its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, the Montana board of science and technology development (second stage), small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) consider investment opportunities originating in any Montana county; and

(d) adopt investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less.

90-8-201. *(Effective July 1, 1999)* **Certification of Montana capital companies — certification of Montana small business investment capital company.** (1) The department shall certify one Montana small business investment capital company, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) using the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) considering investment opportunities originating in any Montana county; and

(d) adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less.

History: En. Sec. 5, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 2, Ch. 583, L. 1987; amd. Sec. 3, Ch. 708, L. 1989; amd. Sec. 4, Ch. 263, L. 1991; amd. Secs. 3, 13, Ch. 576, L. 1991; amd. Sec. 12, Ch. 549, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 549 in (5)(b), after "Montana university system research and development", deleted "the Montana board of science and technology development (second stage)"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Securities regulation — capital companies exempt from salesperson and issuer registration provisions, 30-10-105.

90-8-202. Designation of qualified Montana capital companies — designation of qualified Montana small business investment capital company — tax credit. (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000; or

(b) the qualified Montana small business investment capital company the certified Montana small business investment capital company once it has been privately capitalized at a minimum level of $500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as the qualified Montana small business investment capital company must make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(3) (a) The total amount of tax credits authorized for a single qualified capital company or the qualified Montana small business investment capital company may not exceed $1,500,000, except that the qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. In the event the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to the qualified Montana small business investment capital company, and the department shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the department by a capital company or by the qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the department to qualified capital companies or to the qualified Montana small business investment capital company in accordance with this chapter and the rules of the department.

(5) Investors in a qualified Montana capital company or in the qualified Montana small business investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as the qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as the qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or the qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of $150,000 per taxpayer, except that, as applied to the qualified small business investment capital company, the maximum tax credit is $250,000 per taxpayer and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation defined in 15-31-201 or a partnership may be claimed by the small business corporation shareholders or the partners.

(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company or the qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in the qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than $150,000, or not more than $250,000 in the case of the qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for donation of stock in the qualified Montana small business investment capital company.

History: En. Sec. 6, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 3, Ch. 583, L. 1987; amd. Sec. 1, Ch. 707, L. 1989; amd. Sec. 4, Ch. 708, L. 1989; amd. Sec. 5, Ch. 263, L. 1991; amd. Secs. 4, 13, Ch. 576, L. 1991; amd. Sec. 9, Ch. 807, L. 1991.

90-8-203. No recapture — unqualified investments — penalty. (1) If the amount invested by a taxpayer in a qualified Montana capital company or in the qualified Montana small business investment capital company is not used by the company for qualified investments as provided in 90-8-301, the taxpayer is not subject to a recapture provision for any tax credit claimed by him but the company is subject to the penalty provided for in 90-8-301(4).

(2) If a capital company does not invest its capital base in accordance with 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the investment, the department of revenue may recover from the person receiving the distributed funds a penalty in an amount not to exceed the lesser of:

(a) the amount of the tax credit received by the original investor; or

(b) the amount of funds paid or otherwise distributed to the investor or the subsequent holder of the investment. Dividends or distributions made in accordance with applicable law may not be included in the amount specified in this subsection (b) unless the capital company has not invested its capital base in accordance with 90-8-301.

History: En. Sec. 7, Ch. 554, L. 1983; amd. Sec. 6, Ch. 263, L. 1991; amd. Sec. 5, Ch. 576, L. 1991.

90-8-204. Application requirements. A company applying to become either a certified or qualified Montana capital company or the certified or qualified Montana small business investment capital company shall include in its application evidence that it has disclosed or will disclose to all investors the following:

(1) the condition that a tax credit is not available for investment in a company until the company has been designated a qualified Montana capital company or the qualified Montana small business investment capital company and the investor has received a certificate approving the credit from the department;

(2) the condition that a tax credit will not be made available until a qualified capital company raises at least $200,000 in capital and has been designated a qualified capital company or the qualified Montana small business investment capital company raises at least $500,000 in capital before July 1, 1995, and has been designated the qualified Montana small business investment capital company and the limits on tax credits that may be authorized; and

(3) the fact that the state of Montana is not liable for damages in accordance with 90-8-205.

History: En. Sec. 16, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 7, Ch. 263, L. 1991; amd. Sec. 13, Ch. 576, L. 1991.

90-8-205. State liability disclaimed. The state of Montana may not be held liable for any damages to an investor in a Montana:

(1) capital company that fails to become designated as a certified or qualified Montana capital company; or

(2) small business investment capital company that fails to become designated as a certified or qualified Montana small business investment capital company.

History: En. Sec. 15, Ch. 554, L. 1983; amd. Sec. 8, Ch. 263, L. 1991.

Part 3
Regulation of Capital Companies

90-8-301. Qualified investments — penalty — extension permissible. (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the department approves the amended application;

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the department approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the department approves the amended application.

(2) The qualified Montana small business investment capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) of its capital base raised through investments for which tax credits were taken:

(i) 30% within 3 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the department or within 3 years of its designation as a small business investment corporation by the small business administration, whichever is later;

(ii) 50% within 4 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the department or within 4 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(iii) 70% within 5 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the department or within 5 years after its designation as a small business investment corporation by the small business administration, whichever is later; or

(b) of its capital base, in the case of capital raised through a loan from the small business administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection (2)(a).

(3) Following each annual examination, the department shall notify the department of revenue of any companies that are not in compliance with this section.

(4) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) or the qualified Montana small business investment capital company that fails to make qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the investors investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company or to the qualified Montana small business investment capital company. The department of revenue may abate the penalty if the capital company or the Montana small business investment capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

(5) The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) or (2) upon application by a capital company or the Montana small business investment capital company showing reasonable cause for an extension.

(6) The department of revenue shall deposit any amount received under this section to the credit of the state general fund.

(7) A capital company may invest tax credit funds in an existing profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted toward the investment percentage criteria set forth in this section to the amount to be used for the expansion of the business.

History: En. Sec. 7(2)-(4), Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 4, Ch. 583, L. 1987; amd. Sec. 5, Ch. 708, L. 1989; amd. Sec. 9, Ch. 263, L. 1991; amd. Secs. 6, 13, Ch. 576, L. 1991; amd. Sec. 313, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (6) substituted "section" for "subsection". Amendment effective March 12, 1997.

90-8-302. Restriction on investment. In addition to the requirements of 90-8-301, no more than 50% of the equity raised by a Montana capital company or by the Montana small business investment capital company may be invested in any one business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of this chapter may be invested in any one business.

History: En. Sec. 9, Ch. 554, L. 1983; amd. Sec. 6, Ch. 708, L. 1989; amd. Sec. 10, Ch. 263, L. 1991.

90-8-303. Conflict of interest. (1) A capital company may not invest in any business venture in which the combined ownership of the business venture for all investors in the capital company exceeds 49% at the time of the investment decision.

(2) A member of the investment committee of a Montana capital company or of the Montana small business investment capital company who has an interest in a venture that comes before the committee for a vote shall disclose the interest and abstain from voting on investment in the venture.

History: En. Sec. 10, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 7, Ch. 124, L. 1987; amd. Sec. 11, Ch. 263, L. 1991; amd. Sec. 7, Ch. 576, L. 1991.

90-8-304. Application of securities law. In lieu of registration under Title 30, chapter 10, a certified Montana capital company or the certified Montana small business investment capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing.

History: En. Sec. 14, Ch. 554, L. 1983; amd. Sec. 12, Ch. 272, L. 1987; amd. Sec. 12, Ch. 263, L. 1991.

90-8-305. Sale of debentures. (1) A qualified Montana capital company or the qualified Montana small business investment capital company is authorized to issue and sell debentures to the permanent coal tax trust fund.

(2) Proceeds received by a qualified Montana capital company or by the qualified Montana small business investment capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with

the provisions of 90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the permanent coal tax trust fund.

History: En. Sec. 1, Ch. 708, L. 1989; amd. Sec. 13, Ch. 263, L. 1991; amd. Sec. 16, Ch. 589, L. 1991.

Cross-References

Montana permanent coal tax trust fund — investment, 17-6-305.

90-8-306 through 90-8-310 reserved.

90-8-311. Legislative review and oversight. The department shall report on an annual basis to the revenue oversight committee of the legislature concerning Montana capital companies and the Montana small business investment capital company.

History: En. Sec. 11, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 14, Ch. 263, L. 1991; amd. Sec. 8, Ch. 576, L. 1991.

Cross-References

Powers and duties of Revenue Oversight Committee, 5-18-107.

90-8-312. Investment reporting and recordkeeping. (1) Each qualified Montana capital company and each qualified Montana small business investment capital company shall report to the department on a quarterly basis:

(a) the name of each investor in the qualified Montana capital company or in the qualified Montana small business investment capital company who has applied for a tax credit;

(b) the amount of each investor's investment;

(c) the amount of the tax credit allowed to the investor and the date on which the investment was made; and

(d) any other information determined by the department.

(2) The department shall provide the information contained in subsection (1) to the department of revenue on a quarterly basis.

(3) The department shall provide each investor in a qualified Montana capital company and each investor in the qualified Montana small business investment capital company with a certificate authorizing the tax credit, and the certificate must be submitted with each tax return requesting a credit under 90-8-202.

(4) Each qualified Montana capital company and the qualified Montana small business investment capital company shall report to the department on a quarterly basis all qualified investments that the company has made. The department shall share the information with the department of revenue, in order that the provisions of 90-8-301 may be complied with.

(5) Each qualified Montana capital company shall report to the department all proposed investments to be made from its capital base. The capital company may not make the proposed investment unless the department determines, within 10 days of submission of a report satisfactory to the department, that the proposed investment is qualified under this chapter.

History: En. Sec. 8, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 15, Ch. 263, L. 1991; amd. Sec. 9, Ch. 576, L. 1991.

90-8-313. Examination. (1) At least once a year the department shall examine the books and affairs of each Montana capital company and of the qualified Montana small business investment capital company. The examination must address the methods of operation and conduct of the business of the Montana capital company or of the Montana small business investment capital company to determine if the company is abiding by the purposes of this chapter and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company or for the qualified Montana small business investment capital company in 90-8-301.

(2) The department may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The department may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.

(3) The cost of the annual review must be paid by each Montana capital company or by the Montana small business investment capital company in accordance with reasonable fees assessed by the department.

History: En. Sec. 12, Ch. 554, L. 1983; amd. Sec. 16, Ch. 263, L. 1991; amd. Sec. 10, Ch. 576, L. 1991.

Cross-References

Functions of State Banking Board and Department of Commerce, Title 32, ch. 1, part 2.

90-8-314 through 90-8-320 reserved.

90-8-321. Decertification. (1) If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company or the Montana small business investment capital company is not in compliance with the provisions of this chapter, the department may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 must be included in the claims to be paid.

(2) If in the discretion of the department the action allowed under subsection (1) is not required to protect the company's investors, the department may place the company on notice that it will lose its certification as a Montana capital company or as the Montana small business investment capital company within a specified period of time if the company does not come into compliance with the provisions of this chapter. The department shall automatically decertify a Montana capital company or the Montana small business investment capital company that is assessed a penalty under 90-8-301(4).

(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.

(4) A Montana capital company or the Montana small business investment capital company may apply to the department for decertification.

(5) The department has the power to decertify any capital company not in compliance with this chapter.

(6) The department shall decertify a capital company once the capital company has met the investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has been invested in qualified investments and after at least 5 years have elapsed since the date the capital company was qualified.

History: En. Sec. 13, Ch. 554, L. 1983; amd. Sec. 7, Ch. 708, L. 1989; amd. Sec. 17, Ch. 263, L. 1991; amd. Sec. 11, Ch. 576, L. 1991.

CHAPTER 9

AGRICULTURE DEVELOPMENT

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Chapter Cross-References

Montana Agriculture Development Council — creation, 2-15-3015.

Montana Agricultural Loan Authority Act, Title 80, ch. 12.

Part 1

General Provisions

90-9-101. Short title. This chapter may be cited as the "Montana Growth Through Agriculture Act".

History: En. Sec. 2, Ch. 665, L. 1987.

90-9-102. Purpose. It is the purpose of this chapter to strengthen and diversify Montana's agricultural industry by establishing a public-private sector partnership to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities.

History: En. Sec. 3, Ch. 665, L. 1987.

90-9-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Act" means the Montana Growth Through Agriculture Act.

(2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.

(3) "Agricultural development project" means either a seed capital or research and development project designed to discover, develop, transfer, use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.

(4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the council;

(c) provides economic development potential to the state; and

(d) contains various provisions and terms as required by the act.

(5) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

(6) "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.

(7) "Council" means the Montana agriculture development council established in 2-15-3015.

(8) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(9) "Department" means the department of agriculture established in 2-15-3001.

(10) "Expansion capital project" means an agricultural technology development project undertaken to enable an individual or a company to expand its manufacturing and marketing activities in order to move its agricultural products or services into new markets or to expand existing markets.

(11) "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(12) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in 90-9-401.

(13) "Matching funds" means the funds received in cash by the agricultural development project loan recipient from nonstate appropriated sources and contributed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the council for use in the agricultural development project.

(14) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.

(15) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(16) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.

(17) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.

(18) "Seed capital project" means a startup or expansion capital project.

(19) "Seed capital project loan" means an agricultural development project loan entered into between the council and a loan recipient for a seed capital project.

(20) "State" means the state of Montana.

(21) "Technology transfer and assistance project" means an agricultural development project that:

(a) transfers technology research from the laboratory to the marketplace; or

(b) provides better access and exposure to business development assistance or information for researchers or early-stage agricultural businesses that commercialize agricultural technology products.

(22) "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually.

History: En. Sec. 4, Ch. 665, L. 1987; amd. Sec. 10, Ch. 284, L. 1989; amd. Sec. 1, Ch. 189, L. 1991.

Part 2

Agriculture Development Council

Part Cross-References

Montana Agriculture Development Council — creation, 2-15-3015.

90-9-201. Council organization — meetings. (1) The members of the council shall select a member as chairman. In addition to the chairmanship, the council may establish other offices and select council members to fill these offices.

(2) The council shall meet quarterly and at other times as determined by the chairman or a majority of the council.

History: En. Sec. 5, Ch. 665, L. 1987.

90-9-202. Powers and duties of the council. The council shall:

(1) establish policies and priorities to enhance the future development of agriculture in Montana;

(2) make investments or loans in agricultural development projects that have a short- or long-term ability to stimulate agriculture development and diversification in Montana, including but not limited to:

(a) seed capital loans for development and commercialization of new products and processes;

(b) agricultural business incubators;

(c) foreign and domestic market development activities;

(d) applied technological research; and

(e) agricultural technology assistance and transfer; and

(3) accept grants or receive devises of money or property for use in making the investments or loans authorized by this chapter.

History: En. Sec. 6, Ch. 665, L. 1987; amd. Sec. 11, Ch. 284, L. 1989.

90-9-203. Rulemaking. The council shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(1) governing the conduct of council business;

(2) establishing application procedures that, at a minimum, require the submittal of an executive summary for an agricultural development project loan, a business plan for a seed capital project loan, a research and development project proposal for a research and development project loan, and other documents necessary to meet the criteria established in the act;

(3) establishing procedures to be followed by the council in its review process prior to making an agricultural development project loan;

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan agreement.

History: En. Sec. 9, Ch. 284, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Investments

90-9-301. Agriculture seed capital account — matching funds. (1) There is an agriculture seed capital account administered by the council.

(2) The council may loan money from the agriculture seed capital account to support research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural production processes.

(3) The council may not make a loan to an agricultural development project for which the matching funds have not been received. Matching funds are required prior to any expenditure of state funds for research and development or seed capital projects. The council may accept as matching funds those funds received by the loan recipient within 1 year prior to the execution of the loan agreement.

History: En. Sec. 7, Ch. 665, L. 1987; amd. Sec. 12, Ch. 284, L. 1989.

90-9-302. Repealed. Sec. 2, Ch. 189, L. 1991.

History: En. Sec. 8, Ch. 665, L. 1987; amd. Sec. 13, Ch. 284, L. 1989.

90-9-303. Return-on-investment agreements. The council shall enter into return-on-investment agreements for those products or processes that are to be developed and commercialized as a result of an investment under this chapter. As a part of such an agreement, the council shall require payment of a return that it considers commensurate with the risk of its original investment.

History: En. Sec. 9, Ch. 665, L. 1987.

90-9-304 and 90-9-305 reserved.

90-9-306. Appropriation authority and funding — prohibited investments. (1) The council has authority to accept and expend all funds received by it as grants, donations, or other private or public income, including amounts repaid as principal and interest on investments made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(2) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member must disclose the nature of the affiliation and may not participate in the decision of the council regarding the application.

History: En. Sec. 10, Ch. 665, L. 1987; amd. Sec. 14, Ch. 284, L. 1989; amd. Sec. 13, Ch. 628, L. 1989.

Cross-References

Public employees and officers — standards of conduct, Title 2, ch. 2.

90-9-307. Accountability. The council shall develop independent review and audit procedures to ensure that investments and loans made by it are used for the purposes identified in its investment and loan agreements.

History: En. Sec. 11, Ch. 665, L. 1987; amd. Sec. 15, Ch. 284, L. 1989.

90-9-308 through 90-9-310 reserved.

90-9-311. General criteria underlying agricultural development project loans. The council may make an agricultural development project loan only upon a favorable determination that the proposed agricultural development project:

(1) is consistent with the findings and purposes of the act because it incorporates innovative agricultural technology;

(2) has prospects for collaboration between the public and private sectors of the state's economy;

(3) has prospects for achieving commercial success and for creating new jobs in the state;

(4) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(5) can provide matching funds;

(6) has potential to benefit existing agricultural business;

(7) can be reasonably expected to provide an economic return within a reasonable period of time;

(8) involves processing or adding value to agricultural products produced in the state; and

(9) has a management structure that allows ongoing postdisbursement involvement by the council.

History: **En. Sec. 1, Ch. 284, L. 1989.**

90-9-312. Seed capital projects — program goals. (1) The council may make a seed capital project loan to a seed capital project if it determines that the project meets the loan criteria established in 90-9-311 and 90-9-313 and further determines that the project meets the goals established in subsection (2) and involves development and commercialization of innovative agricultural products or processes.

(2) The goals of this program are:

(a) to assist in the development of innovative technology in the state by providing a source of capital to the agricultural-based sector of the state's economy;

(b) to provide financing and follow-along management support for agricultural businesses in the state that are attempting to develop agricultural products or processes based on innovative technologies; and

(c) to provide a liaison between agricultural businesses in the state and investors in an effort to enhance the pool of capital available to agricultural businesses in the state.

History: **En. Sec. 2, Ch. 284, L. 1989.**

90-9-313. Specific criteria for seed capital project loans. The council may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in 90-9-311 and 90-9-312 and further determines that:

(1) the project develops or employs innovative agricultural products or processes that promise a significant competitive advantage;

(2) the project requires financing that is not available from conventional lending sources;

(3) the project provides an opportunity to preserve the principal of the loan amount and to earn a monetary return;

(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's agricultural businesses;

(6) the company's management team possesses sufficient agricultural business experience;

(7) the company has potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's agricultural product or process is targeted for a commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) if applicable, the company's business plan is designed to provide financing, marketing, and production milestones to accomplish the proposed commercialization.

History: **En. Sec. 3, Ch. 284, L. 1989.**

90-9-314. Research and development project — program goals. (1) The council may make a research and development project loan if it determines that the project meets the loan criteria established in 90-9-311 and 90-9-315 and further determines that the project meets the goals established in subsection (2).

(2) The goals of this program are:

(a) to significantly upgrade existing agricultural research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to advance development of agricultural business in the state;

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace;

(d) to provide financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel;

(e) to facilitate the flow of information to agricultural-based businesses in the state in order to assist those businesses in reaching their full commercial potential; or

(f) to improve the information and resources available to the state's agricultural businesses involved in commercialization of innovative agricultural products and processes.

History: **En. Sec. 4, Ch. 284, L. 1989.**

90-9-315. Specific criteria for research and development project loans. The council may make a research and development project loan only if it determines that the proposed project substantially complies with the criteria and goals set forth in 90-9-311 and 90-9-314 and further determines that the project:

(1) has the potential to diversify or add value to the state's agricultural economy;

(2) demonstrates a clear path to commercial development of the research results within the state;

(3) involves university system research participation, if appropriate;

(4) employs or otherwise takes advantage of existing research and development strengths within the state's university and private research establishment;

(5) involves a realistic and achievable research project design;

(6) develops or employs innovative agricultural products or processes; and

(7) is located within the state.

History: **En. Sec. 5, Ch. 284, L. 1989.**

90-9-316. Agricultural development project loan agreement — contents — council decisions final. (1) If the council determines that an agricultural development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the council, the council may enter into an agricultural development project loan agreement with the company and authorize the disbursement of funds to the company.

(2) The loan agreement, at a minimum, must contain the following provisions:

(a) the project budget;

(b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved at designated times in each area;

(c) the reporting requirements, including but not limited to:

(i) financial statements to be submitted on at least an annual basis as determined by the council;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan;

(e) the payback to the council;

(f) the causes for loan revocation, suspension, or termination; and

(g) the intellectual property provisions.

(3) All decisions of the council are final and are not subject to the contested case provisions of Title 2, chapter 4.

History: En. Sec. 6, Ch. 284, L. 1989.

90-9-317. Seed capital project loan agreement — specific loan requirements — payback. (1) In addition to the loan requirements of 90-9-316, a seed capital project loan must be structured as contracted debt, including but not limited to the following terms:

(a) an interest rate set at a level that provides for a return to the council, from paybacks by all of its portfolio companies, an amount at least equal to the principal amount of the loan and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

(c) a loan amount that may not exceed $50,000 in any one round of financing. Successive rounds of financing in which the council participates for any one company may not occur within a 9-month period. The total amount that may be loaned to any one company may not exceed $150,000.

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company;

(e) a provision that the company will provide the council with a second priority security interest in all of the equipment used in the company's business, accounts receivable, and inventory to secure repayment of the loan;

(f) a provision that the priority security interest in the company's assets referred to in subsection (1)(e) will be evidenced by appropriate forms required to secure the assets as provided in Title 30, chapter 9.

(2) In addition to the provisions in 90-9-316 and subsection (1) of this section, a seed capital project loan agreement may provide for any of the following:

(a) a convertible debenture;

(b) a warrant held by the council; or

(c) a warrant held by a third party for the benefit of the council.

History: En. Sec. 7, Ch. 284, L. 1989.

90-9-318. Research and development project loan agreement — specific loan requirements — payback. In addition to the loan requirements of 90-9-316, a research and development project loan agreement must be structured as contracted debt, including but not limited to the following terms:

(1) The agreement must include provisions calling for a payback of two times the original loan amount, paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the council's financing. This percentage rate may not exceed 5%.

(2) The payback for an agricultural technology transfer and assistance project loan may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the act. No more than 10% of the council's funds designated for research and development in any one fiscal year may be used for agricultural technology transfer and assistance loans.

History: En. Sec. 8, Ch. 284, L. 1989.

Part 4
Marketing — Export Assistance

90-9-401. Agricultural marketing enhancement. The council shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. The council shall:

(1) assist in placing one full-time professional marketing person in Japan or another Pacific Rim country to develop export marketing opportunities in the Pacific region;

(2) provide assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

(3) assist in other appropriate means of enhancing domestic markets for Montana agricultural products.

History: En. Sec. 12, Ch. 665, L. 1987; amd. Sec. 16, Ch. 284, L. 1989.

90-9-402. Export finance assistance. The council shall provide professional assistance to persons who apply for financial assistance for the purpose of developing export sales of Montana agricultural products.

History: En. Sec. 13, Ch. 665, L. 1987.

CHAPTER 10

RESERVED

CHAPTER 11

INDIAN AFFAIRS
PLANNING AND COORDINATION

Part 1 — State Coordinator of Indian Affairs

90-11-101. Legislative policy.
90-11-102. Duties and assistance.

Chapter Cross-References

Compact with United States, Art. I, Mont. Const.

Educational goals and duties — preservation of Indian heritage and culture, Art. X, sec. 1, Mont. Const.

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

Tourism Advisory Council, 2-15-1816.

Committee on Indian Affairs, Title 5, ch. 19.

Federal funds for welfare of Indians, 17-3-107.

State-tribal cooperative agreements, Title 18, ch. 11.

Tribal agreement with district for Indian child compulsory attendance and other agreements, 20-5-108.

Cultural and aesthetic grants, Title 22, ch. 2, part 3.

Montana Historical Society — authority of Board, 22-3-107.

Sale of imitation Indian articles, Title 30, ch. 14, part 6.

Solemnization of Indian marriage, 40-1-301.

Parent-child legal relationship termination — not to disentitle to tribal benefits, 41-3-611.

Indian and federal water rights, Title 85, ch. 2, part 7.

Fort Peck — Montana Compact, 85-20-201.

Agreement with Indians concerning hunting and fishing — Indian treaty of 1855, 87-1-228.

Promotion of Indian tourism activities, 90-1-104.

Indian reservations — promotion and enhancement of economic opportunities, 90-1-105.

Part 1
State Coordinator of Indian Affairs

Part Cross-References

Office of State Coordinator of Indian Affairs — Governor's Office, 2-15-217.

90-11-101. Legislative policy. (1) Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race; and

(2) Whereas, in the course of the past 80 years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of that isolation and of supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a coordinated and united effort in solving such problems; and

(3) Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position to take their rightful place in our society and assume the rights, duties, and privileges of full citizenship and as Indians, it is therefore necessary that a state office of the coordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in cooperation with the United States of America; and

(4) Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana of the administration of economic, social, health, education, and welfare programs for Indians; and

(5) Whereas, Indians who reside off reservations generally qualify for participation in federal programs but are often prohibited from voting on tribal affairs and for tribal officers; and

(6) Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems; and

(7) Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians and since those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;

(8) Then therefore, let it be resolved that the coordinator of Indian affairs should assess the problems of all Indians to include those who reside off known reservations and who seek ways and means of communicating their opinions and needs to agencies of responsibility and that the coordinator should actively assist them in organizing their efforts and that he act as representative and spokesman for organized bodies of Indian people, whether reservation or off-reservation classification, whenever his assistance is required.

History: En. Sec. 1, Ch. 203, L. 1951; amd. Sec. 1, Ch. 319, L. 1969; amd. Sec. 1, Ch. 160, L. 1974; R.C.M. 1947, 82-2701; MCA 1979, 2-15-1112; redes. 90-11-101 by Sec. 20, Ch. 274, L. 1981.

Cross-References

Affirmation of disclaimer — compact with United States, Art. I, Mont. Const.

Educational goals for preservation of Indian culture, Art. X, sec. 1, Mont. Const.

Disclaimer of rights to Indian lands, The Enabling Act, sec. 4 (see anno. vol. 1, Federal Materials).

90-11-102. Duties and assistance. (1) It shall be the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) He shall acquaint himself with the problems confronting the Indians of Montana, and he shall advise the legislative and executive branches of the state of Montana of those problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs and shall act as spokesman for representative Indian organizations and groups, public and private, whenever his support is solicited.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting such assistance on any matter relating to coal development on Indian reservation lands and may make an appropriate charge therefor.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969; amd. Sec. 3, Ch. 160, L. 1974; Sec. 82-2703, R.C.M. 1947; (3)En. Sec. 1, Ch. 221, L. 1973; Sec. 82-2705, R.C.M. 1947; R.C.M. 1947, 82-2703, 82-2705; MCA 1979, 2-15-1113; redes. 90-11-102 by Sec. 20, Ch. 274, L. 1981.

Cross-References

Strip and underground mine siting, Title 82, ch. 4, part 1.

Coal and uranium mine reclamation, Title 82, ch. 4, part 2.

CHAPTERS 12 AND 13
RESERVED

CHAPTER 14
COMMUNITY SERVICE

Part 1 — Montana Community Service Act

90-14-101. Short title.
90-14-102. Definitions.
90-14-103. Office of community service.
90-14-104. Advisory council on community service.
90-14-105. Duties and powers of state agencies.
90-14-106. Prohibited activities.
90-14-107. Office of community service — accounts.
90-14-108. Indemnification for Montana community service act.
90-14-109. Coordination requirements — coordination of programs.

Chapter Cross-References

Montana Conservation Corps, Title 23, ch. 1, part 3.

Part 1
Montana Community Service Act

90-14-101. Short title. This part may be cited as the "Montana Community Service Act".

History: En. Sec. 1, Ch. 534, L. 1993.

90-14-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Advisory council" means the advisory council on community service appointed by the governor to assist in implementation of this part.

(2) "Community service" means any kind of public service that provides a benefit to the state of Montana, any of its political subdivisions, or a tribal government or that benefits disadvantaged or low-income persons, disabled persons, or senior citizens of Montana.

(3) "Coordinator" means the person appointed by the governor as the community service coordinator to administer and coordinate the provisions of this part.

(4) "Corps" means the Montana community service corps, which includes any organization established to provide community services under this part and the Montana conservation corps created under 23-1-301.

(5) "Corpsmember" means a participant in the corps.

(6) "Crewleader" means a participant in the corps who supervises corpsmembers.

(7) "Program" means the Montana community service corps program, which includes all of the corps, educational projects, and volunteer projects

established under this part and under the Montana conservation corps in 23-1-301.

(8) "Volunteer" means a person performing services under this part for an association, not-for-profit corporation, hospital, school, or state, local, or tribal governmental entity without compensation, except that partial or full reimbursement may be made for actual expenses incurred.

History: En. Sec. 2, Ch. 534, L. 1993.

90-14-103. Office of community service. (1) There is an office of community service, which is headed by a coordinator and established in the office of the governor.

(2) The purpose of this office is to:

(a) renew the ethic of civic responsibility in the state;

(b) encourage the citizens of the state, regardless of age or income, to engage in full-time or part-time service to the state;

(c) call young people to serve in projects that will benefit the state and improve their life chances through the acquisition of literacy, job skills, and interpersonal skills;

(d) build on the existing organizational framework of state and local governmental entities to expand full-time and part-time service opportunities in a wide variety of programs for all citizens, particularly youth and older Montanans;

(e) involve participants in activities that would not otherwise be performed by employed workers; and

(f) establish corps to accomplish labor-intensive improvements to public or low-income properties or to provide services for the benefit of the state, its communities, and its people through service contracts that specify the work to be performed by the corps.

(3) The coordinator must be appointed by the governor, after consultation with the advisory council. The coordinator serves at the pleasure of the governor.

(4) The coordinator shall, with the advice of the advisory council, assist the governor in the planning, coordination, operation, and evaluation of programs within state government or under grants, donations, bequests, or other resources received by and administered through state government for Montana community services.

(5) The coordinator is responsible for the submission of applications for federal grants and for funding from any other sources for the creation or operation of corps and volunteer projects. The coordinator shall ensure accountability for all resources received.

(6) The coordinator, together with the advisory council, shall integrate and develop state plans for all services provided under this part, including but not limited to the office of public instruction's serve America program, the Montana university system innovative projects, the Montana conservation corps established in 23-1-301, the department of military affairs' corps involvement, and other community and volunteer service programs.

History: En. Sec. 3, Ch. 534, L. 1993.

90-14-104. Advisory council on community service. (1) The governor shall appoint an advisory council on community service composed of up to 15 members.

(2) Members must include a representative from a tribal government and from at least four state agencies in the following functional areas:

(a) natural resources;
(b) human services;
(c) labor;
(d) K-12 education;
(e) higher education; and
(f) military affairs.

(3) Members may include representatives from local government, not-for-profit agencies, federal agencies, business, labor unions, volunteer groups, and private citizens.

(4) To the extent possible, membership of the advisory council must be balanced according to race, ethnicity, age, gender, and disabilities.

(5) The advisory council shall assist in the development and coordination of state community service programs, integration of services, dissemination of information, recruitment of corpsmembers and volunteers, recruitment and training of crewleaders, development of materials, and evaluation of and accountability for the services provided.

History: En. Sec. 4, Ch. 534, L. 1993.

90-14-105. Duties and powers of state agencies. (1) In addition to the office of community service in the governor's office, the following state agencies are responsible for developing and implementing community service opportunities consistent with the mission and functions of each agency:

(a) The office of public instruction is the agency for corps and volunteer projects in elementary and secondary public, private, and home schools in Montana, including activities sponsored by schools or community-based agencies, to involve school-age youth, including dropouts and out-of-school youth, in service to the community, as well as for programs that involve adult volunteers in the schools. A school district is expected to be the first agency that informs students about the many opportunities to participate in broader community service under this part through the federal serve America grants and any other revenue received for purposes consistent with this part.

(b) The Montana university system is the agency to assist institutions of higher education in Montana, explore new ways to integrate service into the curriculum, support model community service programs on campus, develop teacher and volunteer training programs, and involve students in community service. The community service may complement a student's course of study through the federal higher education innovative projects grants and any other revenue received for purposes consistent with this part.

(c) The department of fish, wildlife, and parks is the agency for corps, community, and volunteer projects in conservation and natural resource settings that are designed to support and enhance state parks, wildlife, watchable wildlife, productivity of state lands, streams and lakes, county and city parks, scenic beauty and access, trails and signs, visitor information centers and rest areas, fairgrounds, and any other conservation-related projects that involve teenagers, young adults, or special community service members, such as adults or senior citizens who provide special skills for a project.

(d) The department of military affairs is the agency for corps, community, and volunteer projects that are designed to involve the national guard in leadership or support roles for service through the provision of organizational and leadership skills, equipment, crewleaders, and other support, as well as the command and coordination of corps that may be mobilized for emergency projects, such as fire suppression or search and rescue.

(e) The governor may designate other agencies, after consultation with the coordinator and the advisory council, for community service projects that focus on improving the quality of life for all Montanans, particularly low-income persons, senior citizens, homebound persons, disabled persons, or institutionalized persons, through preparing and delivering meals, assisting with shopping or other tasks, repairing and painting homes of qualifying persons, providing transportation to and from health care and other appointments, providing respite care, cataloging library books, assisting rural health care providers, providing recreational aides, arranging for tutoring and literacy training, restoring historical photographs, and offering other human service support and community services.

(2) Each agency listed in this section shall ensure that service opportunities that result in a public value are developed for everyone, regardless of race, creed, national origin, or geographical location, by providing leadership through its own network and by forming partnerships with other public or private, nonprofit entities.

(3) Each agency listed in this section shall coordinate and integrate its plans with and through the office of community service.

(4) Projects developed or approved under this part and funded by an agency must be limited to service projects that provide community service, conservation service, educational service, or other public service and that provide documented public value or benefit.

(5) The state agencies listed in this section may:

(a) designate an agency volunteer coordinator to implement its responsibilities under this part;

(b) develop and approve work experience and volunteer projects that meet the requirements of this part;

(c) execute contracts or cooperative agreements that contain the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(d) execute contracts or cooperative agreements with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(e) under the supervision of the office of community service, apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including appropriations;

(f) develop procedures for participants to achieve incentive vouchers, education, credit toward education, skill training, scholarships, housing benefits, or other benefits upon completion of their term of service;

(g) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience or volunteer projects;

(h) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project; and

(i) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program.

History: En. Sec. 5, Ch. 534, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties and powers of department heads, 2-15-112.

90-14-106. Prohibited activities. (1) The office of community service and agencies listed in 90-14-105, in developing and approving work experience and volunteer projects, shall ensure that:

(a) work available to participants is not available as the result of a labor dispute, strike, or lockout and will not be assigned to cause a layoff or downgrading of a position or to prevent the return to work of an available competent employee; and

(b) a work experience project:

(i) does not impair existing contracts for service or collective bargaining agreements; and

(ii) is not inconsistent with the terms of a collective bargaining agreement without written concurrence of the labor organization and employer concerned.

(2) It is unlawful for a person to demand from any public officer, agency, employee, corpsmember, or crewleader an assessment or percentage of any money or profit or its equivalent in support, service, or any other thing of value, with the express or implied understanding that it will be used for political purposes. This part may not be construed to prohibit voluntary contributions to any political committee or organization for legitimate political purposes to the extent allowed by law.

History: En. Sec. 6, Ch. 534, L. 1993.

90-14-107. Office of community service — accounts. (1) There is an account in the state special revenue fund. The office of community service and all participating agencies shall deposit any fee, grant, donation, or reimbursement received under this part into the account to be used to pay expenses for administering and providing service projects.

(2) There is an account in the federal special revenue fund. The office of community service and all participating agencies shall deposit any federal revenue received under the National and Community Service Act of 1990, Public Law 101-610, as amended, and any other federal revenue received related to the purposes and implementation of the provisions of this part into the account to be used to pay expenses for administering and providing service projects.

(3) Reimbursement may be provided to state agencies for work on private property or for other public service. In the case of emergencies and natural

disasters, projects may take place on properties not owned by a public agency without regard to private reimbursement.

(4) The office of community service may transfer funds to participating state agencies for approved community service projects, and lead agencies may transfer funds between each other for cooperative projects. Disbursement authority follows any transfers.

(5) Funds for additional personal services, operating costs, and equipment costs may be appropriated.

History: En. Sec. 7, Ch. 534, L. 1993.

90-14-108. Indemnification for Montana community service act. The provisions of 2-9-305 apply to community service crewleaders, corpsmembers, and volunteers for actions arising from the discharge of assigned community service functions or duties.

History: En. Sec. 8, Ch. 534, L. 1993.

90-14-109. Coordination requirements — coordination of programs. The governor shall ensure that program activities under this part be coordinated with similar programs administered under federal acts and programs already established in this state in order to maximize coordination of programs and to prevent overlapping and duplication of services.

History: En. Sec. 11, Ch. 534, L. 1993.

CHAPTER 15

NATURAL RESOURCE INFORMATION SYSTEM

Part 1 — General

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90-15-305. Water information system.

Part 1

General

90-15-101. Purpose. It is the purpose of this chapter to establish a planning framework for the development of a natural resource information system, to implement the system, and to establish an ongoing Montana natural heritage program.

History: En. Sec. 1, Ch. 650, L. 1983; amd. Sec. 2, Ch. 395, L. 1985.

90-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by 2-15-1514.

(2) "Library" means the state library provided for in 22-1-201.

(3) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(4) "Principal data source agencies" means any of the following state agencies: the department of natural resources and conservation; the department of fish, wildlife, and parks; the department of environmental quality; the department of agriculture; the department of transportation; the state historical society; and the Montana university system.

History: En. Sec. 2, Ch. 650, L. 1983; amd. Sec. 3, Ch. 395, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 498, Ch. 418, L. 1995.

90-15-103. Funding. The library and each principal data source agency may apply for and may receive funding from private and public sources for the purposes of this chapter.

History: En. Sec. 9, Ch. 650, L. 1983; amd. Sec. 4, Ch. 395, L. 1985; amd. Sec. 14, Ch. 628, L. 1989.

Part 2
Advisory Committee

Part Cross-References

Natural Resource Data System Advisory Committee, 2-15-1514.

90-15-201. Duties of committee. The committee shall examine the following matters and make recommendations to the library concerning:

(1) criteria for the categories and types of data to be collected for a natural resource information system;

(2) criteria for the format of data collection;

(3) identification of existing sources of relevant data in the public sector;

(4) identification of data acquisition, storage, and retrieval methodologies that are economical and efficient, that minimize or eliminate the duplication of data bases, and that utilize computer networking;

(5) probable costs to agencies furnishing required data and probable costs of managing the data;

(6) probable benefits to be realized by the establishment of a natural resource information system;

(7) operation of the Montana natural heritage program; and

(8) other items the committee considers of importance to the establishment of a natural resource information system.

History: En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 5, Ch. 395, L. 1985.

90-15-202. Committee staff. The library shall provide staff support to the committee, within the limits of the library's available resources.

History: En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 6, Ch. 395, L. 1985.

90-15-203. Expenses of committee members — meetings. (1) Committee members, while engaged in committee business, are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. These expenses shall be borne by the agency employing the member. Each member serves at the pleasure of the respective appointing authority.

(2) The committee shall establish its own format for the conduct of meetings.

History: En. Sec. 3, Ch. 650, L. 1983.

Part 3
Information System

90-15-301. Establishment of information system. (1) The library, in consultation with the committee, shall establish a planning framework for the implementation of a natural resource information system and shall begin implementation of the plan. This system is to be a comprehensive program for the acquisition, storage, and retrieval of existing data relating to the natural resources of Montana.

(2) The library shall give attention to the factors listed in 90-15-201 and shall prepare any legislation necessary to implement the system.

(3) It is not intended that the system shall require fieldwork to produce data. The system is intended to facilitate the management of data collected by state agencies in the normal course of their operations.

History: En. Sec. 4, Ch. 650, L. 1983; amd. Sec. 7, Ch. 395, L. 1985.

Cross-References

State information and research system, 90-1-109.

90-15-302. Natural heritage program. (1) There is a Montana natural heritage program to be operated by the library. In order to establish the program, the library may contract with an independent contractor or may employ necessary staff. In order to minimize costs, the library or other state agencies may make available state resources and facilities to an independent contractor as part of a contract for services.

(2) The Montana natural heritage program shall be designed to be compatible with similar programs in other states. This program is to be an initial step in the formulation of the comprehensive natural resource information system referred to in 90-15-301 and is to be considered a part of the system.

History: En. Sec. 5, Ch. 650, L. 1983; amd. Sec. 8, Ch. 395, L. 1985.

90-15-303. Interagency cooperation. (1) State agencies shall cooperate with the library and the committee in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the library for purposes of the natural resource information system and the Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the library. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data.

History: En. Sec. 6, Ch. 650, L. 1983; amd. Sec. 9, Ch. 395, L. 1985; amd. Sec. 4, Ch. 45, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 45 in (2), in first sentence before "Montana", inserted "natural resource information system and the".

90-15-304. Availability of information. (1) Except as provided in subsection (3), the library shall make information from the natural resource information system available to local, state, and federal agencies and to the general public.

(2) The library may establish a fee system for information requests in order to cover the costs of providing requested information.

(3) If necessary, the library shall establish procedures to protect confidential information in the possession of state agencies.

History: En. Sec. 7, Ch. 650, L. 1983; amd. Sec. 10, Ch. 395, L. 1985.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

90-15-305. Water information system. (1) There is a Montana water information system, to be operated within the natural resource information system referred to in 90-15-301 and that is to be considered a part of the system.

(2) The Montana water information system shall make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and the existing and potential demand.

History: En. Sec. 3, Ch. 45, L. 1997.

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